IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

Not Restricted

S ECI 2021 03269

NICOLA MAREE GOBBO, P2 & P3 — Plaintiffs

v

STATE OF VICTORIA — Defendant

JUDGE:	Richards JA
WHERE HELD:	Melbourne
DATE OF HEARING:	30 September, 1–4, 7–10, 14–18, 21–23 October, 20–21 November 2024
DATE OF JUDGMENT:	13 June 2025
CASE MAY BE CITED AS:	Gobbo v State of Victoria (redacted)
MEDIUM NEUTRAL CITATION:	[2025] VSC 334

TORTS — Negligence — Personal Injury — First plaintiff a criminal defence barrister who became a registered police informer — First plaintiff publicly identified as an informer and security measures adopted to protect her and her children, the second and third plaintiffs — Whether certain police officers owed duty of care to avoid foreseeable risks of harm to first plaintiff in connection with being recruited as police informer — Duty of care owed by some police officers to avoid foreseeable risks of harm to first plaintiff in connection with being recruited as a police informer — Whether police officers were negligent in permitting first plaintiff's ongoing use as police informer — Whether police officers breached their duty of care to first plaintiff — Whether first plaintiff's own illegal activity put her at risk of harm — No breach of duty of care to first plaintiff — *Victoria Police Act 2013* (Vic) s 73 — *Wrongs Act 1958* (Vic) s 14G — *AB & EF v CD* [2017] VSC 350 — *AB v CD & EF* [2017] VSCA 338 — *AB (a pseudonym) v CD (a pseudonym)* (2018) 93 ALJR 59 — *Caltex Refineries (Qld) Pty Ltd v Stavar* (2009) 75 NSWLR 649.

CONTRACT — Release — Construction — Whether first plaintiff's claims barred by release in respect of earlier proceeding — Whether first plaintiff's causes of action in this proceeding relate to subject matter of earlier proceeding — Whether causes of action in this proceeding had accrued at time of release — *Grant v John Grant & Sons Pty Ltd* (1954) 91 CLR 112 — *Burness v Hill* [2019] VSCA 94.

TORTS — Negligence — Personal Injury — Voluntary assumption of risk — Whether risk of loss and damage was an obvious risk — Whether first plaintiff fully appreciated, and

freely and voluntarily accepted the risks of harm to herself and family members should she be publicly identified as an informer — *Wrongs Act 1958* (Vic) ss 53, 54.

TORTS — Negligence — Personal Injury — Materialisation of inherent risk — Whether risk of public exposure as an informer an inherent risk — Whether loss and damage claimed in proceeding a materialisation of that risk — *Wrongs Act 1958* (Vic) s 55.

TORTS — Negligence — Personal Injury — Whether certain police officers owed a duty of care to first plaintiff's immediate family, including future children — Whether risk of harm to immediate family members, including future children, was reasonably foreseeable — Some police officers owed duty of care to first plaintiff's immediate family, including future children — Whether police officers breached their duty of care to second and third plaintiffs — No breach of duty of care to second and third plaintiffs.

LIMITATION OF ACTIONS — Whether just and reasonable to extend time in which plaintiffs can commence proceeding — Proceedings commenced more than 12 years after date of last act or omission alleged to have resulted in injury — Not just and reasonable to extend limitation period for first plaintiff's claims — Just and reasonable to extend time for second and third plaintiffs' claims — *Limitation of Actions Act 1958* (Vic) ss 27K, 27L.

APPEARANCES:	Counsel	Solicitors
For the Plaintiffs	Mr TP Tobin SC, with Mr PG Hamilton and Ms JE Taylor	Angela Sdrinis Legal
For the Defendant	Mr BF Quinn KC, with Mr TP Warner and Ms J Ryan	Corrs Chambers Westgarth

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GLOSSARY

Term	Definition
AB	Pseudonym for the Chief Commissioner in the *AB & EF v CD* proceedings.
AB & EF v CD proceedings	Proceedings brought by the Chief Commissioner seeking to restrain the Director from disclosing Ms Gobbo's role as a police informer: *AB & EF v CD* [2017] VSC 350 (Ginnane J), *AB v CD & EF* [2017] VSCA 338 (Court of Appeal), and *AB (a pseudonym) v CD (a pseudonym)* (2018) 93 ALJR 59 (High Court).
AB v CD (HC)	*AB (a pseudonym) v CD (a pseudonym)* (2018) 93 ALJR 59.
Best Practice Review	Review & Develop Best Practice Human Source Management Policy.
CCI 03/05	Victoria Police policy titled 'Chief Commissioner's Instruction 03/05'.
CCI 07/03	Victoria Police policy titled 'Chief Commissioner's Instruction 07/03 — Informer Management Policy'.
CD	Pseudonym for the Victorian Director of Public Prosecutions in the *AB & EF v CD* proceedings.
Chief Commissioner	Chief Commissioner of Victoria Police.
Child Protection	Department of Health and Human Services.
Children's Court	Children's Court of Victoria.
Comrie Review	Case Review report by Neil Comrie AO APM titled 'Victoria Police Human Source 3838'.
CYF Act	*Children, Youth and Families Act 2005* (Vic).
Defence	Defendant's defence to the FASOC.
Director	Victorian Director of Public Prosecutions.
DSU	Victoria Police Dedicated Source Unit.
EF	Pseudonym for Ms Gobbo in the *AB & EF v CD* proceedings.
FASOC	Plaintiffs' fourth amended statement of claim.

HSMU	Human Source Management Unit.
Human Source Management Act	*Human Source Management Act 2023* (Vic).
IBAC	Independent Broad-based Anti-corruption Commission.
IBAC Review	Report of the Honourable Murray Kellam AO QC titled 'Report concerning Victoria Police handling of Human Source code name 3838' commissioned by the Independent Broad-based Anti-corruption Commission.
IMU	Informer Management Unit within the Victoria Police State Intelligence Division, Intelligence and Covert Support.
Limitation of Actions Act	*Limitation of Actions Act 1958* (Vic).
LIR	Local Informer Registrar.
MDID	Major Drug Investigation Division of the Crime Department of Victoria Police.
OIC	A police member who is the immediate supervisor of the Controller of a human source.
Operation Briars	Victoria Police investigations of homicide in which serving or former police officers were suspects.
Operation Petra	
Operation Posse	Victoria Police investigation of the Mokbel group.
OPI	Office of Police Integrity.
Police Regulation Act	*Police Regulation Act 1958* (Vic).
Purana	Purana Taskforce established within the Crime Department of Victoria Police to investigate the Melbourne gangland wars.
RIP Act	*Regulation of Investigatory Powers Act 2000* (England & Wales).
Royal Commission	Royal Commission into the Management of Police Informants.
SDU	Victoria Police Source Development Unit.
State	State of Victoria.
Victoria Police Act	*Victoria Police Act 2013* (Vic).

VPM 111-3	Victoria Police manual titled 'VPM Instruction 111-3 Human Sources'.
Witness Protection Act	*Witness Protection Act 1991* (Vic).
Wrongs Act	*Wrongs Act 1958* (Vic).
11792958 or 2958	The human source number later assigned to Ms Gobbo.
2010 proceeding	Proceeding commenced in April 2010 by Ms Gobbo in the Supreme Court of Victoria, resolved in August 2010.
2010 release	Release given by Ms Gobbo at the resolution of the 2010 proceeding.
21803838 or 3838	The human source number initially assigned to Ms Gobbo.

HER HONOUR:

INTRODUCTION

1 In 2005, Nicola Gobbo was a barrister with a flourishing practice in criminal law. She signed the Victorian Bar roll in 1998, a year after she was admitted to practice. By the early 2000s, she had established herself as a hard-working and capable criminal defence barrister, who was regularly briefed to appear for people charged with serious drug offences. Some of her clients were protagonists in Melbourne's gangland wars, including Antonios (Tony) Mokbel and other members of the Mokbel family, and George Williams and his son Carl. She had chambers in Crockett Chambers, alongside many senior and well-regarded members of the Victorian criminal bar.

2 In September 2005, Ms Gobbo became a registered police informer. For more than three years, she was in frequent contact with her handlers in the Victoria Police Source Development Unit (**SDU**), to whom she provided a large amount of information that was used to investigate and prosecute crimes. Some of that information was about people who were or had been her clients, and some of it was privileged or otherwise confidential. During this time, Ms Gobbo continued to practise as a criminal defence barrister and, on occasion, she acted for people about whom she had given information to police. Some of those people, including Tony Mokbel, were convicted and sentenced to terms of imprisonment.

3 In January 2009, Victoria Police deregistered Ms Gobbo as an informer, after she agreed to make a statement to be used in the prosecution of Paul Dale for the murders of Terence and Christine Hodson. Ms Gobbo and Victoria Police were unable to agree about measures to protect her personal safety, and in April 2010 Ms Gobbo brought a proceeding in this Court (**2010 proceeding**). The proceeding resolved in August 2010, on terms of settlement that included the **State** of Victoria paying $3,000,000 to Ms Gobbo, and Ms Gobbo giving a release in favour of the State and current and former members of Victoria Police (**2010 release**).

4 The fact that Ms Gobbo had been a police informer remained secret for many years. She ceased working as a barrister in March 2009, and the settlement in August 2010 brought an end to her dealings with Victoria Police. In 2011, Ms Gobbo met her partner, with whom she had two children [redacted]. However, in mid-2014 he was imprisoned for offences committed before they met. Ms Gobbo left paid work to care for her children, who are known in this proceeding as P2 and P3. For several years from 2015, Ms Gobbo was an active volunteer at the children's kindergarten and childcare centre.

5 Following a review by the Independent Broad-based Anti-corruption Commission in 2015 (**IBAC Review**), the **Director** of Public Prosecutions concluded that he had a duty to disclose Ms Gobbo's role as an informer to Tony Mokbel and six other convicted persons. The **Chief Commissioner** of Police brought proceedings in this Court, seeking to restrain the Director from making that disclosure on the ground of public interest immunity. The Chief Commissioner failed to persuade Ginnane J or the Court of Appeal that Ms Gobbo's identity should remain confidential, notwithstanding the grave risks to her safety if her role was disclosed.[1] The Chief Commissioner sought and was granted special leave to appeal to the High Court.

6 In November 2018, the High Court revoked the grant of special leave, having received evidence that the safety of Ms Gobbo and her children could be adequately protected if Ms Gobbo agreed to enter into the witness protection program.[2] The Court used strong language to explain why the public interest required disclosure of Ms Gobbo's identity:[3]

> As Ginnane J and the Court of Appeal held, there is a clear public interest in maintaining the anonymity of a police informer, and so, where a question of disclosure of a police informer's identity arises before the trial of an accused, and the Crown is not prepared to disclose the identity of the informer, as is sometimes the case, the Crown may choose not to proceed with the prosecution or the trial may be stayed.
>
> Here the situation is very different, if not unique, and it is greatly to be hoped

1 *AB & EF v CD* [2017] VSC 350; *AB v CD & EF* [2017] VSCA 338.
2 *AB (a pseudonym) v CD (a pseudonym)* (2018) 93 ALJR 59, [7] (***AB v CD (HC)***).
3 *AB v CD (HC)*, [9]–[12]. Ms Gobbo is referred to by the pseudonym 'EF'.

> that it will never be repeated. EF's actions in purporting to act as counsel for the Convicted Persons while covertly informing against them were fundamental and appalling breaches of EF's obligations as counsel to her clients and of EF's duties to the court. Likewise, Victoria Police were guilty of reprehensible conduct in knowingly encouraging EF to do as she did and were involved in sanctioning atrocious breaches of the sworn duty of every police officer to discharge all duties imposed on them faithfully and according to law without favour or affection, malice or ill-will. As a result, the prosecution of each Convicted Person was corrupted in a manner which debased fundamental premises of the criminal justice system. It follows, as Ginnane J and the Court of Appeal held, that the public interest favouring disclosure is compelling: the maintenance of the integrity of the criminal justice system demands that the information be disclosed and that the propriety of each Convicted Person's conviction be re-examined in light of the information. The public interest in preserving EF's anonymity must be subordinated to the integrity of the criminal justice system.
>
> To say so is not to overlook that, on the evidence before the courts below and now before this Court, EF and her children will be at grave risk of harm unless EF agrees to enter into the witness protection program. Nor is it to ignore that, thus far, EF has declined to do so, taking the view that Victoria Police cannot be trusted to maintain confidentiality and apparently that she would prefer to wear the risk than subject herself and her children to the limitations and burdens that witness protection would surely entail. It is further not without significance that Victoria Police may bear a large measure of responsibility for putting EF in the position in which she now finds herself by encouraging her to inform against her clients as she did. But large though those considerations may be, they do not detract from the conclusion that it is essential in the public interest for the information to be disclosed.
>
> Generally speaking, it is of the utmost importance that assurances of anonymity of the kind that were given to EF are honoured. If they were not, informers could not be protected and persons would be unwilling to provide information to the police which may assist in the prosecution of offenders. That is why police informer anonymity is ordinarily protected by public interest immunity. But where, as here, the agency of police informer has been so abused as to corrupt the criminal justice system, there arises a greater public interest in disclosure to which the public interest in informer anonymity must yield. If EF chooses to expose herself to consequent risk by declining to enter into the witness protection program, she will be bound by the consequences. If she chooses to expose her children to similar risks, the State is empowered to take action to protect them from harm.

7 Following the High Court's decision, Ms Gobbo was publicly identified as 'Lawyer X' and the nature and extent of her informing became widely known. As a result of the disclosure, and consequent risks to her safety, Ms Gobbo had to leave her former life behind. She and the children lived overseas for more than a year, initially with the assistance of Victoria Police. However, Ms Gobbo was not satisfied with the arrangements proposed by Victoria Police for witness protection, and did not agree

to enter the witness protection program. Instead, she made her own arrangements for visas, accommodation, healthcare, and the children's education. In December 2019, when their visas expired, they returned to Australia.

8 In the meantime, Ms Gobbo's partner had been granted parole. He was able to rejoin the family in early 2020.

9 As soon as Ms Gobbo and the children returned to Victoria, the Department of Health and Human Services (**Child Protection**) obtained an interim accommodation order from the **Children's Court** of Victoria, placing the children in Ms Gobbo's care.[4] The conditions of the order required Ms Gobbo to live as directed by Victoria Police, and follow the lawful directions of Victoria Police in relation to the safety and protection of the children. For the next two years, Ms Gobbo and the children lived constrained and isolated lives at several different locations in Victoria. They changed their identities. There was a great deal of tension between Ms Gobbo and police about the family's living arrangements. This tension peaked when it became clear that Victoria Police were unable to resettle the family in another country, and had no other options for them in the long term.

10 In September 2021, the Children's Court found that the children were in need of protection, because they were at risk of seeing their mother be killed, or being killed themselves.[5] The Children's Court also found that the security measures being taken for the protection of the children were causing them psychological and emotional harm.[6] However, Child Protection could propose no long-term case plan to protect the children from the risk of death or witnessing their mother being killed. In those circumstances, the Children's Court required Ms Gobbo and her partner to give undertakings to depart for overseas to a properly planned destination, taking the utmost care to put in place all measures available to ensure the protection of their identity and future location.[7] Those undertakings were given in October 2021, and

4 Under the *Children, Youth and Families Act 2005* (Vic) (**CYF Act**), Pt 4.8, Div 5.
5 CYF Act, s 162(1)(c).
6 CYF Act, s 162(1)(e).
7 CYF Act, ss 275(1)(a), 278(1).

soon afterwards the family left Australia. They have since returned, and are living a more settled life outside Victoria.

11 In this proceeding, commenced in September 2021, Ms Gobbo and the children seek damages for injuries they claim to have suffered as a result of the negligence of a number of individual police officers.[8] Ms Gobbo's case is essentially that the risks of disclosure and consequent harm to her were so great that she should never have been recruited as a police informer. She says that the more senior police officers who were aware she was being recruited should have stopped it, and that Assistant Commissioner Simon Overland should not have permitted her ongoing use as an informer. She says that since being publicly identified as an informer in about December 2018, she has suffered psychological injury, loss of income, and loss of earning capacity.

12 The children's claims are dependent upon Ms Gobbo's claims, on the basis that it was reasonably foreseeable that her close family members would also be exposed to risks of harm to their safety if she were exposed as a police informer.

13 The plaintiffs allege negligence on the part of 10 individual police officers.

14 First, they allege negligence in inducing Ms Gobbo to become a police informer. This allegation is made against four 'frontline officers':

(a) Paul Rowe, who in August and September 2005 was a detective senior constable in the Major Drug Investigation Division (**MDID**) of the Crime Department of Victoria Police;

(b) Steven Mansell, who in August and September 2005 was a detective sergeant in MDID;

(c) Officer Sandy White (a pseudonym), who in September 2005 was an officer in

[8] A claim for damages for misfeasance in public office was abandoned in closing submissions: Transcript of Proceedings, *Gobbo v State of Victoria* (Supreme Court of Victoria, S ECI 2021 03269, Richards J, 30 September, 1–4, 7–10, 14–18, 21–23 October, 20–21 November 2024) (**Transcript**) 1932:24–7.

the SDU within the State Intelligence Division, in the Intelligence and Covert Support Department of Victoria Police; and

(d) Officer Peter Smith (a pseudonym), who in September 2005 was also an officer in the SDU.

15 Second, the plaintiffs allege negligence against six more senior officers who are said to have permitted Ms Gobbo to become a police informer:

(a) James (Jim) O'Brien, who in September 2005 was a detective senior sergeant and officer in charge of the **Purana** Taskforce within the Crime Department of Victoria Police;

(b) Robert Hill, who in September 2005 was a detective inspector and acting superintendent of the MDID and in charge of Mr Rowe and Mr Mansell;

(c) Ian Thomas, who in September 2005 was the detective superintendent of State Intelligence in the Intelligence and Covert Support Department, acting commander of the Intelligence and Covert Support Department, and the Central Informer Registrar for the Informer Management Unit;[9]

(d) Terry Purton, who in September 2005 was the commander in the Crime Department, with oversight of both MDID and Purana;

(e) John Whitmore, who in September 2005 was a superintendent in the Crime Department with oversight of Purana; and

(f) Simon Overland, who in September 2005 was Assistant Commissioner Crime, with direct line responsibility for the operation of the Crime Department, including MDID and Purana.

16 Third, the plaintiffs allege that Mr Overland was negligent in permitting Ms Gobbo's ongoing use as a police informer until January 2009. Mr Overland was Assistant

[9] See [214] below.

Commissioner Crime until June 2006, when he was appointed Deputy Commissioner of Victoria Police. He held that position until March 2009, when he was appointed Chief Commissioner.

17 The proceeding is defended by the State, which is liable under s 74 of the ***Victoria Police Act*** *2013* (Vic) for a police tort committed by a police officer. The State denies that the individual officers owed Ms Gobbo a duty of care, that they breached any duty of care, and that any breach caused her any injury, loss, or damage. It says that Ms Gobbo provided information to Victoria Police voluntarily, without inducement, and with full appreciation of the risks of harm to her should her informing become known to those on whom she was informing. It relies on the 2010 release as a complete answer to all of Ms Gobbo's claims, says her claims are statute barred, and raises several other defences. It denies any liability to P2 and P3.

Summary of conclusions

18 The questions for determination in the proceeding, and a summary of my conclusions in relation to each issue, are as follows:

MS GOBBO'S CLAIMS

Negligent inducement claim

Duty of care

19 (1) *On or about 16 September 2005, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith give assurances to Ms Gobbo that, if she became an informer:*

20 *(a) her identity would be protected;*

21 *(b) the information she provided would remain confidential to Victoria Police; and*

22 *(c) she would remain safe?*

23 Mr Rowe and Mr Mansell

24 During their two conversations with Ms Gobbo on 31 August 2005, Mr Rowe and Mr Mansell told her that, if she cooperated with police, she would be managed by officers who were specialists in dealing with human sources. They then introduced Ms Gobbo to Mr White and Mr Smith, two specialist officers in the SDU. They did not give the alleged assurances to Ms Gobbo.

25 Mr White and Mr Smith

26 During their first two meetings with Ms Gobbo on 16 and 21 September 2005, Mr White and Mr Smith gave Ms Gobbo some limited and heavily qualified assurances. They assured her that recordings of their meetings would remain confidential and be kept securely. They explained that she would not be dealing directly with investigators, and that any information she provided would be sanitised before being passed on to investigators. They outlined some measures that would be taken to protect her safety, but gave no assurance that she would remain safe.

27 (2) *In or about September 2005, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith know that Ms Gobbo:*

28 *(a) was vulnerable, being concerned about her health, scared for her welfare, and under pressure as a result of her gangland connections;*

29 *(b) was being induced by them to assist MDID and Purana investigations;*

30 *(c) relied on them to protect her from harm as a result of disclosing confidential information about her clients; and*

31 *(d) was at serious risk, including risk of death, if confidential information disclosed by Ms Gobbo to Victoria Police was revealed outside Victoria Police?*

32 Mr Rowe and Mr Mansell

33 Mr Rowe and Mr Mansell were aware on 31 August 2005 that Ms Gobbo was under pressure as a result of her gangland connections and held general concerns for her health and welfare.

34 They did not induce Ms Gobbo to become an informer. At most, they encouraged her to consider becoming an informer and facilitated her in taking the next step.

35 Mr Rowe and Mr Mansell did not know, or have reason to believe, that Ms Gobbo relied on them to protect her from harm as a result of disclosing confidential information about her clients. Their response to her requests for assurances about her safety was to refer her to the specialist officers at the

SDU, after which they had no further contact with her.

36 They knew, or ought to have known, that Ms Gobbo was at serious risk, including risk of death, if it was revealed outside Victoria Police that Ms Gobbo had disclosed confidential information about her clients to Victoria Police.

37 Mr White and Mr Smith

38 By the end of the second interview on 21 September 2005, Mr White and Mr Smith were aware that Ms Gobbo was concerned for her health and welfare, and that she was under pressure due to her gangland connections, in particular her association with Mr Mokbel.

39 They did not induce Ms Gobbo to become an informer. Ms Gobbo chose to attend the meetings on 16 and 21 September 2005 to discuss assisting police by providing information, and was offered a choice whether to proceed. She chose to talk, providing a great deal of information in those first two meetings, with minimal prompting.

40 Both Mr White and Mr Smith knew, or ought to have known, that Ms Gobbo relied on them to protect her from harm as a result of informing on her clients. They gave limited and qualified assurances in response to her clearly expressed concerns for her safety.

41 Mr White and Mr Smith were well aware that Ms Gobbo was at serious risk, including risk of death, if information about her clients disclosed by her to Victoria Police was revealed outside Victoria Police. The risk was obvious.

42 (3) *In or about September 2005, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith know, or ought they have known, that:*

43 *(a) they could not protect Ms Gobbo from being exposed as an informer; and*

44 *(b) in that event, there was a risk of her suffering harm?*

45 Mr Rowe and Mr Mansell

46 Both Mr Rowe and Mr Mansell understood that, if Ms Gobbo became an informer, she might later be exposed and would then be at risk of harm. However, neither of them assumed responsibility to protect her from that risk, beyond referring her to the specialist SDU.

47 Mr White and Mr Smith

48 Mr White and Mr Smith knew that, as individual police officers, they could not protect Ms Gobbo from being exposed as a result of events beyond their control. The risk of information leaking from within Victoria Police was ever-present, as was the potential for identifying information to be obtained through compulsory disclosure. The serious, possibly fatal consequences of exposure were self-evident.

49 (4) *In light of the answers to questions 1 to 3, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith owe Ms Gobbo a duty to take reasonable care to avoid her suffering injury in connection with being induced to provide information to Victoria Police?*

50 Ms Gobbo was not induced to provide information to Victoria Police, and so the premise of the alleged duty of care did not exist. Allowing for some awkwardness in the pleading, I considered whether any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith had a duty to take reasonable care to avoid Ms Gobbo suffering injury in connection with being recruited as a police informer.

51 Mr Rowe and Mr Mansell

52 Neither Mr Rowe nor Mr Mansell owed a duty to take reasonable care to avoid foreseeable risks of harm to Ms Gobbo in connection with being recruited as a police informer. She was already under pressure when she spoke with them on 31 August 2005, hence her interest in assisting police. Mr Rowe and Mr Mansell gave Ms Gobbo no assurances and assumed no responsibility for her safety after introducing her to Mr White and Mr Smith.

Beyond that point, they had no influence over whether Ms Gobbo would become an informer and no knowledge of the information she would go on to provide.

53 Mr White and Mr Smith

54 Mr White and Mr Smith had a duty to take reasonable care to avoid Ms Gobbo suffering injury in connection with being recruited as a police informer. In particular, they had a duty to take reasonable care in making their initial assessment and deciding whether to proceed with her registration as an informer.

Breach

55 (5) *Would a reasonable person in the position of Mr Rowe, Mr Mansell, Mr White, or Mr Smith not have induced Ms Gobbo to become an informer?*

56 Ms Gobbo was not induced to become an informer. Consistent with my approach to duty of care, I considered whether a reasonable person in the position of Mr Rowe, Mr Mansell, Mr White, or Mr Smith would not have recruited Ms Gobbo as a police informer.

57 Mr Rowe and Mr Mansell

58 While Mr Rowe and Mr Mansell did not owe a duty of care to Ms Gobbo, they were instrumental in her recruitment as an informer. They acted reasonably by introducing her to specialist officers in the SDU.

59 Mr White and Mr Smith

60 Reasonable care for Ms Gobbo's safety did not require Mr White and Mr Smith to reject her as a potential informer. She was a willing recruit who was seeking police assistance to relieve the pressure she was experiencing from Mr Mokbel and her broader client group, and was able to provide a great deal of useful information about them.

61 It was the policy of Victoria Police to utilise informers to investigate crime, in accordance with the established procedures set out in the relevant

policy. Mr White and Mr Smith were part of the newly formed SDU, with responsibility for managing high risk informers. Reasonable police officers in their position would have followed the existing policy, which involved making an initial assessment and completing the required registration application form. At that time, the policy did not advert to the particular risks of receiving information from a lawyer. While this was a serious organisational failure, it was reasonable for individual officers to follow the existing policy.

62 (6) *Did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith induce Ms Gobbo to become an informer?*

63 None of Mr Rowe, Mr Mansell, Mr White, or Mr Smith induced Ms Gobbo to become an informer.

64 Mr Rowe and Mr Mansell encouraged her to 'get on board', and facilitated her interest in assisting police by introducing her to the SDU.

65 Mr White and Mr Smith conducted an initial assessment of Ms Gobbo's suitability as a human source. They assessed her to be viable, high risk, and high value, and recommended registration and management by the SDU.

66 (7) *In light of the answers to questions 4 to 6, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith breach their duty of care to Ms Gobbo?*

67 Mr Rowe and Mr Mansell did not owe Ms Gobbo a duty of care, and they did not induce her to become an informer.

68 Mr White and Mr Smith did not breach their duty of care to Ms Gobbo. Their actions were in accordance with Victoria Police policy and were reasonable in the circumstances.

Initial negligent permitting claim

Duty of care

69 (8) *In or about September 2005, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore know, or ought they have known, that Ms Gobbo:*

70 (a) was vulnerable, being concerned about her health, scared for her welfare, and under pressure as a result of her gangland connections;

71 (b) was being induced by Mr Rowe, Mr Mansell, Mr White, and Mr Smith to assist MDID and Purana investigations;

72 (c) relied on them and Mr Rowe, Mr Mansell, Mr White, and Mr Smith to protect her from harm as a result of disclosing confidential information about her clients;

73 (d) was at serious risk, including risk of death, if confidential information disclosed by Ms Gobbo to Victoria Police was revealed outside Victoria Police?

74 (9) *In or about September 2005, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore know, or ought they have known, that:*

75 (a) they could not protect Ms Gobbo from being exposed as an informer; and

76 (b) in that event, there was a risk of her suffering harm?

77 (10) *In light of the answers to questions 8 and 9, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore owe Ms Gobbo a duty to take reasonable care to avoid her suffering injury in connection with being induced to and providing information to Victoria Police, including confidential information relating to her clients?*

78 Mr O'Brien

79 Mr O'Brien knew on 7 September 2005 that the SDU had been asked to assess Ms Gobbo's suitability to become an informer. He knew from 19 September 2005 that Ms Gobbo had been registered as an informer and could provide information about Mr Mokbel and his associates. He understood that there was a danger that Ms Gobbo might be exposed as an informer and, if that occurred, would be at risk of serious harm, including risk of death.

80 Mr O'Brien did not owe the alleged duty of care to Ms Gobbo. Nor did the salient features of their relationship give rise to a duty for Mr O'Brien to take reasonable care to avoid foreseeable risks of harm to Ms Gobbo in connection with being recruited as a police informer.

81 Mr Hill

82 Mr Hill had the same knowledge and understanding of the

circumstances of Ms Gobbo's recruitment as Mr O'Brien. He did not owe Ms Gobbo the alleged duty of care, or a duty to take reasonable care to avoid foreseeable risks of harm to her in connection with being recruited as a police informer.

83 Mr Thomas

84 Mr Thomas was the nominated Local Informer Registrar (**LIR**) on the form completed on 16 September 2005 applying to register Ms Gobbo as an informer. He was therefore the person with responsibility for deciding whether to approve the application. By late November 2005, he knew, or ought to have known, all the information about Ms Gobbo set out in the detailed risk assessment prepared by the SDU.

85 Ms Gobbo was not induced to become an informer, and so Mr Thomas did not owe her a duty to take reasonable care to avoid harm in connection with being induced. However, in light of Mr Thomas's responsibilities as the nominated LIR for Ms Gobbo, and the information provided in the risk assessment, he had a duty to take reasonable care to avoid foreseeable risks of harm to Ms Gobbo in connection with being recruited as a police informer.

86 Mr Purton

87 There was limited evidence in relation to Mr Purton. At the very most, Mr Purton might have had the same knowledge as Mr Hill. He did not owe the alleged duty of care to Ms Gobbo, or a duty to take reasonable care to avoid foreseeable risks of harm to her in connection with being recruited as a police informer.

88 Mr Whitmore

89 Mr Whitmore had even less involvement than Mr Hill and Mr Purton, and so cannot have known more than either of them about the circumstances of Ms Gobbo's recruitment as an informer. That limited knowledge is not sufficient to give rise to the alleged duty of care, or a duty in the alternative

terms considered.

90 Mr Overland

91 Mr Overland knew from 26 September 2005 that Ms Gobbo had been registered as an informer and was being handled by the SDU. He may have been aware two weeks earlier of the plan for her to speak with the SDU.

92 Mr Overland knew that Ms Gobbo was under pressure due to her gangland connections, in particular her association with Mr Mokbel and his associates. He understood that she had come to police as a way out of a situation where she felt she was trapped and her life was at risk. He was not aware of Ms Gobbo's health concerns.

(a) Mr Overland understood the risks to Ms Gobbo of becoming an informer against serious organised crime. He knew that she might be killed if she was exposed as an informer. He also understood that there was a danger that she might be exposed as an informer, despite the steps he was taking to see that information she provided was treated with the utmost care. He appreciated the potential for her to provide privileged or confidential information about her clients, exacerbating the risk of exposure.

93 Mr Overland's seniority within Victoria Police sets him apart from the other investigators alleged to have owed Ms Gobbo a duty of care. He was the only person within Victoria Police command who was aware of Ms Gobbo's recruitment and could have intervened to stop it. He therefore had a duty to take reasonable care to avoid foreseeable risks of harm to Ms Gobbo in connection with being recruited as a police informer.

Breach

94 (11) *In respect of any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore who owed a duty of care to Ms Gobbo, would a reasonable person in each of their positions:*

95 *(a) not have had members of Victoria Police induce Ms Gobbo to be an informer; or*

96 *(b) stopped any communications between members of Victoria Police and Ms Gobbo that provided confidential information about her clients?*

97 (12) *If so, did any of them fail to take that precaution?*

98 (13) *In light of the answers to questions 8 to 12, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore breach their duty of care to Ms Gobbo?*

99 Mr O'Brien, Mr Hill, Mr Purton, and Mr Whitmore

(a) None of Mr O'Brien, Mr Hill, Mr Purton, or Mr Whitmore owed a duty of care to Ms Gobbo in relation to her recruitment as an informer. Reasonable police officers in their position would have left the management of this particular high risk informer to the specialist SDU, which is what occurred.

100 Mr Thomas

(a) A reasonable person in Mr Thomas's position would have considered the risks and benefits of registering Ms Gobbo as an informer — or confirming her registration — in accordance with the then-policy of Victoria Police. There is no evidence that Mr Thomas did not do this, and no proof that Mr Thomas breached the duty of care he owed to Ms Gobbo.

101 Mr Overland

(a) In September 2005, the risks to Ms Gobbo were not so overwhelming that the only reasonable course for Mr Overland was to try to stop Victoria Police from using her as a source. He understood that Ms Gobbo became an informer because she was already in danger from her gangland associations, and felt her life was at risk. It was reasonable for Mr Overland to rely on the policies and procedures that Victoria Police had in place for the management of high risk informers. Mr Overland did not breach his duty of care to Ms Gobbo.

Ongoing negligent permitting claim

Duty of care

102 (14) *At any time between January 2006 and January 2009, did Mr Overland know, or ought he have known, that Ms Gobbo:*

103 *(a) was vulnerable, being concerned about her health, scared for her welfare, and under pressure as a result of her gangland connections;*

104 *(b) had been induced by Mr Rowe, Mr Mansell, Mr White, and Mr Smith to assist gangland investigations;*

105 *(c) relied on members of Victoria Police to protect her from harm as a result of disclosing confidential information about her clients;*

106 *(d) was at serious risk, including risk of death, if confidential information disclosed by Ms Gobbo to Victoria Police was revealed outside Victoria Police?*

107 (15) *At any time between January 2006 and January 2009, did Mr Overland know, or ought he have known, that:*

108 *(a) he and other members of Victoria Police could not protect Ms Gobbo from being exposed as an informer; and*

109 *(b) in that event, there was a risk of her suffering harm?*

110 (16) *In light of the answers to questions 14 and 15, did Mr Overland owe Ms Gobbo a duty to take reasonable care to avoid her suffering injury in connection with providing information to Victoria Police, including confidential information relating to her clients?*

(a) As time went on, Mr Overland grew increasingly concerned for Ms Gobbo's safety. He understood that the longer that Ms Gobbo continued providing information to police, the greater the risk that she would be compromised. However, he did not know that she was disclosing confidential information about her clients. At some point before December 2008, he formed the view that she was placing herself at risk by her own conduct.

(b) As the senior member of Victoria Police best placed to take responsibility for its use of Ms Gobbo as an informer, Mr Overland owed her a duty to take reasonable care to avoid her suffering injury in connection with providing information to Victoria Police.

Breach

111 (17) *If 'yes' to question 16, would a reasonable person in Mr Overland's position have ended the use of Ms Gobbo as an informer before January 2009?*

112 (18) *If so, did Mr Overland fail to take that precaution?*

(a) In the context of Mr Overland's duty of care to Ms Gobbo, a reasonable person in his position would not have ended her use as an informer before January 2009. A reasonable person would have asked about an exit strategy, as Mr Overland did at intervals between May 2006 and December 2008. A reasonable person would also have accepted the advice from Ms Gobbo's handlers that it was not safe to end the relationship and she should continue to be managed by the SDU.

113 (19) *Did Ms Gobbo provide information to Victoria Police that was confidential to her clients or the subject of her clients' legal professional privilege?*

114 (20) *If so, in providing that information did Ms Gobbo engage in illegal activity for the purposes of s 14G of the* **Wrongs Act** 1958 *(Vic)?*

115 (21) *If so, how should that illegal activity be taken into account in determining whether Mr Overland breached his duty of care to Ms Gobbo?*

(a) Ms Gobbo provided information to Victoria Police that was confidential to her clients and the subject of their legal professional privilege. Informing on her clients was in breach of the Victorian Bar rules of conduct, and breached her fiduciary duties and her obligations of confidence to her clients.

(b) Ms Gobbo engaged in several specific instances of perverting the course of justice, which amounted to illegal activity for the purposes of s 14G of the Wrongs Act. However, there was no clear relationship between that illegal activity and the alleged breach of Mr Overland's duty of care.

(c) Ms Gobbo also engaged in illegal activity during her entire time as an informer, by obtaining a financial advantage by deception. She accepted briefs and payment for her work, pretending that she was a barrister who would act in her clients' best interests and keep their confidences, when she was not. By engaging in this illegal activity over more than three years from September 2005, Ms Gobbo put herself at serious risk of harm from any client who discovered she was an informer. I took that into account in determining

whether Mr Overland breached his duty of care by failing to stop her from informing at an earlier time.

116 (22) *In light of the answers to questions 16 to 21, did Mr Overland breach his duty of care to Ms Gobbo?*

(a) While Mr Overland owed Ms Gobbo a duty to take reasonable care to avoid Ms Gobbo suffering injury in relation to being an informer, he did not breach that duty. A reasonable person in Mr Overland's position did not have to end Ms Gobbo's use as an informer before January 2009. Mr Overland reasonably inquired about an exit strategy for her in May 2006, December 2006, and July–August 2007, and on each occasion accepted advice from the SDU that it was not safe to end the relationship. Although it makes little difference, I am reinforced in that conclusion by my finding that Ms Gobbo's own illegal conduct put her at risk of harm.

Causation

117 (23) *Did any breach of duty cause or materially contribute to Ms Gobbo suffering:*

118 *(a)* *major depressive disorder;*

119 *(b)* *post-traumatic stress disorder;*

120 *(c)* *any other physical or psychiatric condition?*

121 This question does not arise, since no breach of duty has been established.

122 The events that followed Ms Gobbo's 2018 exposure as a police informer caused a relapse of her pre-existing major depressive disorder. Her major depressive disorder has been present since at least 2009, with episodes of remission and relapse over the years.

123 Ms Gobbo also developed a trauma and stressor-related disorder as a result of her dealings with police following her return to Australia in late 2019. While there were indications that Ms Gobbo had traumatic symptoms before 2018, there was no diagnosis of a trauma and stressor-related disorder

until after 2018.

124 The evidence did not support a finding that Ms Gobbo's 2018 exposure as an informer caused or exacerbated any of the physical conditions from which she suffers.

125 There was considerable force to the State's submission that the true cause of the harm pleaded by Ms Gobbo was the action taken by Child Protection to protect the safety of her children in late 2019, in circumstances where Ms Gobbo had refused to enter the witness protection program. The measures were taken in accordance with an order of the Children's Court, and any consequent injury to Ms Gobbo is not compensable.

Extension of time claim

126 (24) *Is it just and reasonable to extend the time within which Ms Gobbo can commence the proceeding, having regard to the matters set out in s 27L of the* **Limitation of Actions Act** 1958 *(Vic) and the plaintiffs' further and better particulars filed 9 October 2024?*

127 I am not persuaded that it would be just and reasonable to extend the limitation period for Ms Gobbo's claims. The public interest in reasonable finality looms large in this case, and the plaintiffs have not shown good reason to permit Ms Gobbo to litigate statute barred claims. She knew she had a claim in 2014, but for reasons that were not adequately explained she did not commence this proceeding until September 2021. I have given particular weight to the absence of any reason for the delay between 2014 and late 2018, when Ms Gobbo was otherwise well placed to litigate.

DEFENCES

Release defence to all claims

128 (25) *Is Ms Gobbo bound by the 2010 release?*

129 The plaintiffs did not press their claim that Ms Gobbo should be relieved from the State's reliance on the 2010 release, because of an alleged material breach by Victoria Police.

130 (26) *Do any of Ms Gobbo's causes of action in this proceeding relate to the subject matter of the 2010 proceeding?*

131 Ms Gobbo's causes of action in this proceeding relate to the subject matter of the 2010 proceeding. The two proceedings arose from the same facts and circumstances, and overlapped in several ways.

132 (27) *Had any of Ms Gobbo's causes of action in this proceeding accrued as at 12 August 2010?*

133 If Ms Gobbo had been entitled to damages for negligence arising from her recruitment and use as a police informer, her causes of action would have accrued before she was deactivated, and certainly before 12 August 2010. Her stressful experiences as an informer contributed to the development of her major depressive disorder before the unsuccessful transition to witness protection.

134 (28) *In light of the answers to questions 25, 26, and 27, are Ms Gobbo's claims barred by the 2010 release?*

135 Ms Gobbo's claims are barred by the 2010 release. The causes of action she alleged in this proceeding related to the subject matter of the 2010 proceeding, and — if they accrued at all — they accrued before 12 August 2010.

Voluntary assumption of risk defence to negligence claims

136 (29) *Was the risk of the loss and damage claimed in this proceeding an 'obvious risk' for the purposes of ss 53 and 54 of the Wrongs Act, so that Ms Gobbo is presumed to have been aware of the risk?*

137 (30) *If 'yes' to question 29, was Ms Gobbo unaware of the risk?*

138 (31) *If 'no' to question 29, did Ms Gobbo fully appreciate, and freely and voluntarily accept, the risks of harm to herself and her family members should it become known to those upon whom she was informing that she was assisting and providing information to Victoria Police, including the risk of the loss and damage claimed in this proceeding?*

139 (32) *In light of the answers to questions 29 to 31, has the State made out a defence of voluntary assumption of risk to Ms Gobbo's claims in negligence?*

140 The risk of being exposed as an informer, and suffering harm as a

result, would have been obvious to a reasonable person in Ms Gobbo's position. She was not unaware of the risk. Rather, she actually perceived and fully appreciated the risk of being exposed as an informer, and what might happen to her in that event.

141 Ms Gobbo had a choice whether to start providing information to police, and whether to continue doing so. As I have found, she was not induced or prevailed upon to become an informer. Ms Gobbo had a range of other ways she could have relieved the pressure she was experiencing from Mr Mokbel and her other gangland connections. There was nothing to stop her from deciding that the risk of exposure was not worth taking, and walking away. Instead, she chose to accept the risk.

142 The State would have made out a defence of voluntary assumption of risk, had it been found liable for any of Ms Gobbo's claims.

Inherent risk defence to ongoing negligent permitting claim

143 (33) *Was the risk of public exposure of Ms Gobbo as an informer an inherent risk within the meaning of s 55(2) of the Wrongs Act?*

144 (34) *If so, is the loss and damage claimed in this proceeding the result of the materialisation of that risk, for which the State is not liable in negligence by operation of s 55(1) of the Wrongs Act?*

145 The risk of exposure was an inherent risk for the purposes of s 55(1) of the Wrongs Act. The State could not be held liable in negligence for harm suffered by Ms Gobbo due to the materialisation of that risk, if the ongoing negligent permitting claim had been established.

DAMAGES

146 (35) *In respect of any injury identified in answer to question 23, what is a fair and reasonable sum to compensate Ms Gobbo for:*

147 *(a) her past and future pain and suffering, including loss of enjoyment of life;*

148 *(b) her past loss of earnings and her loss of earning capacity; and*

149 *(c) past and future medical and like expenses?*

150 (36) *Should Ms Gobbo be awarded exemplary damages?*

151 Ms Gobbo did not suffer injury as a result of any breach of the duty of care owed to her by Mr White, Mr Smith, Mr Thomas, or Mr Overland. It was therefore unnecessary to assess damages of any kind.

Contributory negligence

152 (37) *Did Ms Gobbo fail to take reasonable care to avoid suffering the loss and damage claimed in this proceeding?*

153 (38) *If so, to what extent is it just and equitable to reduce any damages recoverable by Ms Gobbo?*

154 It was unnecessary to answer these questions.

CHILDREN'S CLAIMS

Nervous shock claim

155 (39) *During the period 2003 to 2009, was it reasonably foreseeable to any of Mr Rowe, Mr Mansell, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore that:*

156 *(a) there was a risk of harm to immediate family members of Ms Gobbo if she was publicly exposed as an informer;*

157 *(b) Ms Gobbo may bear children; and*

158 *(c) in that event, those children would be at risk of harm if Ms Gobbo was publicly exposed as an informer?*

159 (40) *If so, did any of Mr Rowe, Mr Mansell, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore owe a duty of care to P2 and P3?*

160 (41) *If so, did any of Mr Rowe, Mr Mansell, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore breach that duty?*

161 It was reasonably foreseeable to Mr White, Mr Smith, Mr Thomas, and Mr Overland that there was a risk of harm to Ms Gobbo's immediate family members if she was exposed as an informer. They also ought reasonably to have foreseen that she might later have children and that, if she did so, her children would be at risk of harm if she was exposed as an informer.

162 I was prepared to accept that Mr White, Mr Smith, Mr Thomas, and Mr Overland owed a duty of care to Ms Gobbo's immediate family, including

any future children.

163 Consistent with my conclusions in relation to Ms Gobbo, none of Mr Rowe, Mr Mansell, Mr O'Brien, Mr Hill, Mr Purton, or Mr Whitmore owed a duty of care to P2 or P3.

164 The claims for damages for P2 and P3 were based on Ms Gobbo's claims in negligence, and their claims could succeed only if hers did. For the reasons I have given in relation to Ms Gobbo's claims, none of Mr White, Mr Smith, Mr Thomas, or Mr Overland breached their duty of care to P2 and P3.

Causation

165 (42) *Did any breach of duty cause or materially contribute to P2 suffering any psychiatric condition?*

166 (43) *Did any breach of duty cause or materially contribute to P3 suffering any psychiatric condition?*

167 These questions did not arise, because no breach of duty to P2 or P3 was established.

168 Both P2 and P3 suffered psychological injury following the 2018 exposure of Ms Gobbo as an informer, which necessitated huge and traumatic disruption to their lives over more than three years.

Extension of time claim

169 (44) *Is it just and reasonable to extend the time within which P2 and P3 can commence the proceeding, having regard to the matters set out in s 27L of the Wrongs Act and the plaintiffs' further and better particulars filed 9 October 2024?*

170 It is just and reasonable to extend the time for P2 and P3 to bring their claims.

Inherent risk defence to negligence claims

171 (45) *Was the risk of public exposure of Ms Gobbo as an informer an inherent risk within the meaning of s 55(2) of the Wrongs Act?*

172 (46) *If so, is the loss and damage claimed in this proceeding the result of the materialisation of that risk, for which the State is not liable in negligence by operation of s 55(1) of the Wrongs Act?*

173 The risk of Ms Gobbo's public exposure as an informer was an inherent risk. The effect of s 55(1) is that the State could not be held liable in negligence for harm suffered by P2 or P3 due to the materialisation of that risk, if the ongoing negligent permitting claim had been established.

Damages

174 (47) *In respect of any injury identified in answer to question 42, what is a fair and reasonable sum to compensate P2 for:*

175 *(a)* *past and future pain and suffering, including loss of enjoyment of life;*

176 *(b)* *loss of earning capacity; and*

177 *(c)* *past and future medical and like expenses?*

178 (48) *In respect of any injury identified in answer to question 43, what is a fair and reasonable sum to compensate P3 for:*

179 *(a)* *past and future pain and suffering, including loss of enjoyment of life;*

180 *(b)* *loss of earning capacity; and*

181 *(c)* *past and future medical and like expenses?*

182 (49) *Should P2 and P3 be awarded exemplary damages?*

183 The plaintiffs have not established that the injuries suffered by P2 and P3 were the result of any breach of the duty of care owed to them by Mr White, Mr Smith, Mr Thomas, or Mr Overland. They are not entitled to damages of any kind.

184 The proceeding must be dismissed, for the reasons that follow.

Royal Commission and other proceedings

185 This proceeding is but one of many examinations of Victoria Police's recruitment and use of Ms Gobbo as a police informer that have taken place since the High Court's decision in November 2018.

186 In December 2018, the Victorian Government established a royal commission to examine Victoria Police's recruitment and management of police informers — referred to by police as 'human sources' — subject to legal obligations of confidentiality or privilege. The **Royal Commission** into the Management of Police

Informants conducted its inquiry during 2019 and 2020, and reported on 30 November 2020.

187 The Royal Commission's final report was more than 1,000 pages across four volumes, with 111 recommendations.[10] The size of the report reflected the Royal Commission's terms of reference, which were much broader than the issues for determination in this proceeding. Only a fraction of the evidence received by the Royal Commission was tendered in this proceeding, while I received evidence about matters that were outside the scope of its inquiry. The findings set out in this judgment are made on the basis of the evidence in this proceeding, in relation to the issues defined by the pleadings. They may therefore differ in some respects from the findings of the Royal Commission. Indeed, the Royal Commission's report was not part of the evidence in this proceeding, and I have not considered its findings in deciding this case.

188 In October 2020, the Victorian Legal Services Board applied to this Court to remove Ms Gobbo from the roll of practitioners kept by the Court. The application was determined by consent, on the basis of a statement of agreed facts. Justice Forbes made the order sought by the Board, observing:[11]

> The agreed facts before me provide a stark illustration of the duplicitous nature of the conduct. The descriptions of the conduct in the agreed facts are fundamental and appalling breaches of her obligations to those clients. They depart from all three of the principles underpinning fitness for office. The conduct demonstrated partiality and so lacked honesty. It lacked a knowledge of what ought to be done and in executing her duties she did so without the ability to maintain loyalty and confidentiality that the fiduciary relationship demanded above all other interests.

189 In addition, there have been numerous applications for leave to appeal against conviction, under s 326A of the *Criminal Procedure Act 2009* (Vic), by former clients of Ms Gobbo. To date, three of those applicants have succeeded in having convictions

10 *Royal Commission into the Management of Police Informants* (Final Report, November 2020).
11 *Victorian Legal Services Board v Gobbo* [2020] VSC 692, [48].

overturned,[12] while others have failed.[13] In November 2024, detailed findings of fact were made in relation to an application for leave to appeal by Tony Mokbel, in answer to questions referred to the Trial Division by the Court of Appeal.[14]

190 While these other proceedings all relate in some way to Victoria Police's recruitment and use of Ms Gobbo as an informer, the issues for decision were different from those in this proceeding, and the evidence was not the same. The findings in this judgment are focused on deciding the issues defined by the pleadings in this proceeding, and are based on the evidence received at the trial.

Liability for police torts

191 When Ms Gobbo was recruited to be a police informer, the police force of Victoria was constituted under the ***Police Regulation Act*** *1958* (Vic).[15] Section 4 provided for the appointment of a Chief Commissioner of Police, and so many Deputy Commissioners and Assistant Commissioners as the Governor in Council thought fit. Under s 5(1), the Chief Commissioner had the superintendence and control of 'the force', which was defined to mean 'officers and other members of the police force of Victoria whether employed upon land or upon water'.[16] Section 8(1) empowered the Chief Commissioner to appoint, promote, and transfer:

> (a) so many commanders, chief superintendents, superintendents, chief inspectors and inspectors; and
>
> (b) so many senior sergeants, sergeants, senior constables and constables —
>
> as the Governor in Council thinks necessary.

192 All officers of police had the superintendence and control of that portion of the force placed under their charge, subject to the authority of the Chief Commissioner.[17]

12 *Orman v The Queen* (2019) 59 VR 511; *Cvetanovski v The Queen* [2020] VSCA 272; *Mokbel v DPP (Cth)* [2020] VSCA 325.

13 *Gavanas v The King* (2022) 304 A Crim R 503; *Karam v The King* [2023] VSCA 318; *Arnautovic v The King* [2024] VSCA 286. See also *Visser v DPP (Cth)* [2020] VSCA 327.

14 *Mokbel v The King* [2024] VSC 725.

15 Now called the *Police Regulation (Pensions) Act 1958* (Vic). This judgment refers to Version 102 of the ***Police Regulation Act*** *1958* (Vic), incorporating amendments as at 1 June 2005, as in force in September 2005.

16 Police Regulation Act, s 3(1) (definition of 'the force').

17 Police Regulation Act, s 5(1).

Under s 6(1), the powers of the Chief Commissioner could be exercised by a Deputy Commissioner.

193 Since 1 July 2014, Victoria Police has been constituted as the police force of Victoria by s 6 of the Victoria Police Act. It consists of the Chief Commissioner, Deputy Commissioners, Assistant Commissioners, other police officers, protective services officers, police recruits, police reservists, and Victoria Police employees.[18]

194 At no time has the police force of Victoria been constituted as a body corporate. Rather, it consists of the individual police officers of all ranks and other people who are designated as members of 'the force' or, since 1 July 2014, Victoria Police. For that reason, a claim for damages cannot be brought against Victoria Police as a corporate entity.

195 At common law, the Crown was not liable for torts committed by individual police officers who were themselves responsible for exercising the powers of the office of constable and personally liable for any misuse of those powers.[19] Now, under s 74(1) of the Victoria Police Act, the State is liable for a police tort — that is, a tort committed by a police officer in the performance or purported performance of the officer's duties.[20] A police officer who commits a police tort for which the State is liable is not liable to any person for the police tort.[21]

196 While the State now bears liability for police torts, they can only be committed by individual police officers. In a case such as this, a plaintiff must establish that an individual police officer committed each element of the alleged police tort. A plaintiff who alleges negligence bears the burden of proving that the individual police officer owed a duty of care and breached that duty. This may involve demonstrating that the officer knew, or ought to have known, of the matters said to

18 ***Victoria Police Act** 2013* (Vic), s 7.
19 *Enever v The King* (1906) 3 CLR 969; *Victoria v Horvath* (2002) 6 VR 326, [42].
20 Victoria Police Act, s 72(1). However, the State is not liable for a police tort if the State establishes on a police tort claim that the conduct giving rise to the police tort was serious and wilful misconduct by the police officer who committed the police tort: s 74(2).
21 Victoria Police Act, s 74(3).

give rise to a reasonably foreseeable risk of harm to the plaintiff. The knowledge of one officer cannot necessarily be attributed to others, without proof that they also knew, or ought to have known, of the relevant risk.

Evidentiary matters

197 Of the 10 police officers alleged to have been negligent, only Mr Overland gave evidence at the trial. The State did not call any other police officer to give evidence; its only other witness was a psychiatrist who had prepared a medico-legal report in relation to Ms Gobbo.

198 In those circumstances, the plaintiffs submitted that I should apply the rules in *Jones v Dunkel*[22] and *Blatch v Archer*[23] in making my findings of fact.

199 The rule in *Jones v Dunkel* is that an unexplained failure by a party to call a witness in its camp may justify an inference that the witness's evidence would not have assisted the party's case.[24] If this inference is drawn, it may be taken into account in two ways. First, the trier of fact may more readily accept the evidence that has been given, which relates to a matter about which the absent witness could have given evidence. Second, it may give greater confidence to draw inferences that are open on the available evidence, where the absent witness could have given evidence to displace the inference.[25] It does not permit speculation about the evidence that the absent witness might have given, in order to fill gaps in the evidence.

200 The rule in *Blatch v Archer* is that 'all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted'.[26] According to *Cross on Evidence*, the rule in *Jones v Dunkel* is a particular application of that maxim:[27]

> The maxim goes to the problem that in deciding issues of fact on the civil

[22] (1959) 101 CLR 298.
[23] (1774) 1 Cowp 63.
[24] *Jones v Dunkel* (1959) 101 CLR 298, 308 (Kitto J), 312 (Menzies J), 320–1 (Windeyer J).
[25] See, eg, *O'Donnell v Reichard* [1975] VR 916, 929 (Newton and Norris JJ); *Kuhl v Zurich Financial Services Australia Ltd (*2011) 243 CLR 361, [63] (Heydon, Crennan and Bell JJ).
[26] *Blatch v Archer* (1774) 1 Cowp 63, 65 (Lord Mansfield CJ).
[27] JD Heydon, *Cross on Evidence* (LexisNexis, 14th ed, 2023) [1215] (citations omitted).

> standard of proof, the court is concerned not just with the question "what are the probabilities on the limited material which the court has, but also whether that limited material is an appropriate basis on which to reach a reasonable decision". Lord Mansfield CJ's maxim is wider than the rule in *Jones v Dunkel* because the rule is available against a party not bearing the onus of proof. But the maxim is also available against a party bearing that onus — in permitting a conclusion that uncalled evidence would not have helped the case of a party not calling it, or permitting inferences available against the party to be more strongly drawn, or assisting in deciding whether the party bearing the onus has discharged it.

201 The plaintiffs submitted that each of Mr Rowe, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Thomas, Mr Purton, and Mr Whitmore were witnesses that the State could reasonably have been expected to call.[28] They said that, in circumstances where serious wrongdoing was directly pleaded against those officers, the Court would reasonably expect to hear from them as witnesses. In many instances, the alleged tortfeasors were the only people able to give evidence on issues in dispute, in particular in relation to their actual knowledge and state of mind at relevant times. They were unquestionably in the State's camp, and the failure to call them was unexplained.

202 The State disputed that these eight police officers were logically in its camp. It pointed out that it had issued subpoenas requiring each of them to attend to give evidence, and that they had all been through a significant amount of litigation including the Royal Commission. More significantly, it said that the evidence adduced by the plaintiffs had not made out a case to answer in respect of those officers. In those circumstances, it made the forensic decision not to call them.

203 I accept the plaintiffs' submission that Mr Rowe, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Thomas, Mr Purton, and Mr Whitmore were witnesses in the State's camp, and that there was a reasonable expectation that it would call them. They were all either current or former police officers, and were the alleged tortfeasors for whom the State was said to be vicariously liable under s 74(1) of the Victoria Police Act.

[28] The tenth alleged tortfeasor, Mr Mansell, died in 2019.

204 There was no explanation for the State's failure to call these people as witnesses. Indeed, the State was in a position to call them, having served each of them with a subpoena to attend to give evidence. However, after the plaintiffs had closed their case, the State sought an order setting aside the subpoenas addressed to every person other than Mr Overland, on the basis that it no longer required the addressees to give evidence.

205 In those circumstances, I accept as a general proposition that the evidence of Mr Rowe, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Thomas, Mr Purton, and Mr Whitmore would not have assisted the State's case. As a result, I can be more confident in accepting the evidence of the plaintiffs' witnesses on matters about which the absent witnesses could have given evidence. I can also be bolder in drawing inferences adverse to them from the evidence that is available. However, I may not speculate about what their evidence might have been.

Use of informers by Victoria Police

206 Whether individual police officers ought reasonably to have foreseen the risks to Ms Gobbo, and the reasonableness of their response to those risks, depends in part on Victoria Police's policies and procedures for the use and handling of informers at relevant times. These have evolved significantly over the last three decades. Some of the changes predated Ms Gobbo's recruitment, while others were implemented in response to criticisms of her use as an informer.

207 In this section of the judgment, I outline the policies and procedures that were in place from the late 1990s onwards. The survey is necessarily limited to the evidence received in this case.

Detective Training School guidelines on Informers (1 October 1997)

208 The survey begins in October 1997, with a set of guidelines apparently prepared for training Victoria Police detectives in the use and management of informers. A redacted version of these guidelines was tendered by consent.

209 The guidelines commenced with a statement that informers are a valuable

investigative tool. Members were encouraged to cultivate informers for that purpose, while being mindful of the perils involved in handling informers and the ethical and legal considerations that may arise.[29] The guidelines distinguished between criminal and non-criminal informers, the latter category comprising public spirited citizens and eccentric or nuisance-type individuals. Public-spirited citizens who communicated information to police could come from 'every strata of society' and 'generally represent no problem since the informer is not activated by improper motives, and communicates genuine information in good faith'.[30]

210 While there was a paragraph about how to deal with information offered by clairvoyants,[31] the guidelines did not address any legal or ethical issues associated with receiving information from lawyers.

211 The guidelines provided that members were to maintain the 'utmost confidentiality' in relation to the identity of an informer, while also contemplating disclosure of an informer's name to a superior when necessary or when directed.[32] It informed members of a system of registration, under which all informers were to be registered with a District Register of Informers, with each informer allocated a registration number to be quoted in subsequent references to the informer.[33] The registration process set out in Appendix A of the guidelines did not appear to involve any risk assessment, and nor did the Informer Registration Application forms (Parts A to D) referred to in Appendix B.[34] An example of an Informer Registration Application (Parts A to C) from 1999 did not include any risk assessment.[35] Part D was not in evidence.

212 The guidelines contemplated a direct relationship between a detective and an informer, and did not provide for any separation between an investigation and those

29 **Exhibit P58**: Detective Training School Informers dated 1 October 1997, 2.
30 Exhibit P58, 3.
31 Exhibit P58, 5.
32 Exhibit P58, 8.
33 Exhibit P58, 9.
34 Exhibit P58, Appendix A, Appendix B.
35 Exhibit P46: Informer Registration Application Part A dated 13 May 1999.

responsible for handling an informer.

Chief Commissioner's Instruction 07/03 — Informer Management Policy

213 The Chief Commissioner's Instruction 07/03 — Informer Management Policy (**CCI 07/03**) was issued under s 17 of the Police Regulation Act in September 2003. It replaced the previous instruction 'VPM 111-3',[36] and implemented key recommendations of a review of Victoria Police informer management procedures and the Drug Squad Review.[37] The new policy aimed to ensure greater transparency and security at all stages, and emphasised duty of care for both police members and informers.[38]

214 CCI 07/03 provided that it 'is Victoria Police policy to utilise informers for the purposes of crime investigations in a manner in which the integrity of informers, police members and Victoria Police is protected'.[39] It covered several distinct phases of informer management, including recruitment, registration, interaction, payment, and deactivation. A significant change was the introduction of a Central Informer Register, to be managed by the newly formed Informer Management Unit (**IMU**) within the State Intelligence Division, Intelligence and Covert Support.[40]

215 In the section headed 'Recruitment', the policy stated:[41]

> Informers represent a valuable resource for attaining information on criminal activity. However, the recruitment of informers also represents a risk, which must be identified and monitored with a view to effective management. A professional and transparent approach to the recruitment of informers can assist members in the penetration of criminal networks and at the same time safeguard members' integrity. The initial risk assessment contained in this section is designed to be built upon during the operational 'life' of the Informer and is used as a gauge in the ongoing assessment of the Informer.

216 Regarding the initial process of recruiting an informer, CCI 07/03 required a police member to conduct an initial risk assessment, as follows:[42]

36 **Exhibit P61**: Chief Commissioner's Instruction regarding Informer Management Policy dated 22 September 2003, [6]. Instruction VPM 111-3 was not in evidence.
37 Exhibit P61, [2]. These reviews and their recommendations were not in evidence.
38 Exhibit P61, [3].
39 Exhibit P61, [5].
40 Exhibit P61, [4].
41 Exhibit P61, [20].
42 Exhibit P61, [23].

23. Where a member has identified a person they believe meets the requirements of registration as an Informer, the member must:

…

- Conduct an initial assessment (see Part C, Informer Registration/Reactivation Application) maintaining the confidentiality of the source and the timeliness of information. Include information relevant to the following —
  - **Risk to Informer** — including history, criminal or otherwise, which may lead to risk of compromise.
  - **Risk to Information** — including content, intended use, subsequent dissemination, relevance.
  - **Risk to Handler(s)/Controller** — experience and ability of member to fulfil role, adequate training, personal knowledge relating to informer.
  - **Risk to Victoria Police** — embarrassment to Victoria Police, loss of credibility, exposure of methodology, cost effectiveness.
  - **Risk to Public** — impact on community, harm to public, confidence issues.
- Complete the Informer Registration/Reactivation Application;
- Submit the Informer Registration/Reactivation Application to the OIC, accompanied by:
  - Adequate document security classification;
  - The initial risk assessment;
  - Any other supporting documents such as photographs; and
  - Confirm Informer's identity and provide available identity documents.

217 Under the section 'Registration', the policy provided that an 'OIC' (a police member who is the immediate supervisor of the Controller)[43] must also complete a risk assessment, as follows:[44]

27. On receipt of the Informer Registration/Reactivation Application:

- Assess the suitability of the Informer;
- Evaluate any identified risks;
- Consider potential risks;

[43] Exhibit P61, [7].
[44] Exhibit P61, [27].

- Consider risk management strategies;
- Ensure that the member has complied with relevant policy and procedures;
- Consider operational priorities;
- Consider Duty of Care issues; and
- Ensure all relevant official notebook and or diary entries have been made.

218 If satisfied that the informer should be registered, the OIC then had to deliver the relevant documents to the LIR.[45] The LIR was responsible for evaluating risks, as follows:[46]

> 30. On receipt of the Informer Registration/Reactivation Application form the LIR must:
>
> - Assess the suitability of the informer;
> - Evaluate any identified risks;
> - Consider potential risks;
> - Consider risk management strategies;
> - Ensure that both the member and OIC have complied with relevant policy and guidelines;
> - Ensure that there has been adequate consideration of Duty of Care issues;
> - Ensure all relevant diary/notebook entries have been made;

219 If the LIR approved the application for registration, a number of steps were then required. These included creating a code unique to the informer, noting that code in the Local Informer Registry and on the informer's Local Informer Management File, and advising the OIC and the IMU of the code.[47] The LIR also had to forward certain documentation to the IMU, including the original Informer Registration/Reactivation Application form and the original risk assessment.

220 On receiving a code for an informer, the IMU was required to record the code in the

45 Exhibit P61, [28].
46 Exhibit P61, [30].
47 Exhibit P61, [31].

Central Informer Registry and compile a Central Informer Management File consisting of certain information.[48] The IMU was not expected to undertake a further risk assessment — that responsibility rested with the relevant OIC and LIR.

221 While CCI 07/03 required a formal risk assessment to be undertaken, documented, and reviewed, it did not include guidance for identifying potential risks, other than noting the 'legal, moral and psychological risks' of using child informers.[49] There was no mention of any particular risks associated with recruiting a lawyer as an informer.

222 In relation to handling of informers, CCI 07/03 introduced a requirement to allocate a handler, a co-handler, and a controller to an informer.[50] It also required all contact between an informer and a handler to be documented, through the completion of Informer Contact Reports.[51] There was no instruction to separate responsibility for handling an informer from responsibility for an investigation, and no reference to a 'sterile corridor'.

Dedicated Source Handling Teams Project — Final Report

223 The plaintiffs tendered by consent the Final Report of the Dedicated Source Handling Teams Project, dated 31 May 2004. The Project was established in January 2004, in response to a proposal submitted by the IMU for a method of applying a 'sterile corridor' to human source intelligence.[52] The Final Report recommended the establishment of a Dedicated Source Handling Team in order to separate the investigator from the source handler. It made detailed recommendations for the staffing, resources, and operating procedures of the proposed Dedicated Source Handling Team. It also recommended updating the 'Informer Management Policy' in several respects, including to incorporate an amended Acknowledgement of Responsibilities process for the initial registration of an informer.[53]

48 Exhibit P61, [36].
49 Exhibit P61, [21].
50 Exhibit P61, [12]–[14].
51 Exhibit P61, [11], [42].
52 **Exhibit P71**: Dedicated Source Handling Teams Project — Final Report dated May 2004, 4.
53 Exhibit P71, 5–6.

224 The Final Report outlined the role of the proposed Dedicated Source Handling Team:[54]

> The establishment of a Dedicated Source Handling Team is arguably the most important, and perhaps the most controversial element in effecting the development of effective human source usage within Intelligence-led policing. Operational duties undertaken by the DSHT must be solely concerned with the management of human sources. In order to preserve the confidentiality of the human source and the integrity of any resulting investigations, handlers must not have direct involvement in the actioning of intelligence obtained from the human source. Duties of a DSHT will include:
>
> - Operational oversight of human source registrations;
> - Assistance in the risk assessment process;
> - Cultivation and management of human sources at a local level;
> - Targeted recruitment to meet local strategic intelligence requirements;
> - Identification of local crime reduction strategies through human source intelligence;
> - Management of "higher risk" sources including juveniles; and
> - Recruitment and management of human sources targeting state and national security.

225 The report also recommended that the Controller and Handler should be dedicated to source management roles alone, to 'ensure effective and ongoing recruitment of sources, maintenance of source relationships, efficient intelligence reporting and dissemination — for actioning of source product':[55]

> Recommendation 2.1 — That Standard Operating Procedures for a DSHT reflect the principle that Controller and Handler functions are solely concerned with the operational management of registered Informers.

226 Regarding a duty of care for informer use, it recommended that 'duty of care issues surrounding Informer use need to be considered at all stages of the relationship':[56]

> Recommendation 2.4 — The Standard Operating Procedures for a DSHT are reflective of the need to ensure that duty of care considerations associated with Informer use are continually monitored and regularly reviewed for Informer, Handler and Controller.

54 Exhibit P71, 16.
55 Exhibit P71, 6, 27, 47.
56 Exhibit P71, 7, 29, 48.

227 Regarding risk assessment, it recommended:[57]

> Recommendation 4.1 — That a formal monthly review of Informer risk assessment be conducted by the nominated Controller.
>
> Recommendation 4.2 — That VICPOL adheres to the Australasian Human Source Risk Assessment model.
>
> Recommendation 4.3 — The means of determining the level to which oversight and assistance is applied to an Informer relationship by a DSHT is by way of Risk Assessment. Furthermore, that Informers assessed as high-risk will be managed by the DSHT.

228 Also in evidence were redacted minutes of a meeting of the Dedicated Source Handling Teams Project held on 18 February 2005.[58] Mr Overland was the chair of the steering committee for that project, which also included Mr Thomas and Mr Purton. Mr White was also present at the meeting, along with other members of the project team.

229 Item 1 recorded in the minutes was 'Update of Dedicated Source Unit-Pilot'.[59] Mr Thomas reported positive feedback from all involved in the pilot, which had been accepted well by the Crime Department. Mr White noted that regions had been slower to embrace the concepts. Against this item the minutes recorded that the Central Informer Registrar for the Dedicated Source Unit (**DSU**) would be the Commander, Intelligence and Covert Support Department.[60]

230 Item 2 was 'Status of outstanding recommendations from DSHT Project'.[61] Mr Thomas identified that a number of recommendations were suspended pending the outcome of the DSU pilot, which was putting the organisation at risk. It was agreed that it would be another six to 12 months before full implementation of the DSU, and that broader recommendations should be advanced. The project team was directed to identify specific recommendations and bring them back to the steering committee.

57 Exhibit P71, 7–8, 33–4, 48–9.
58 **Exhibit P114**: Dedicated Source Handling Teams Project Meeting Minutes dated 18 February 2005.
59 Exhibit P114, 1.
60 Exhibit P114, 1.
61 Exhibit P114, 2.

231 Item 3 was 'New process for registration and risk assessment'.[62] Someone outlined the new process for registration and risk assessment as trialled by the DSU. Mr Thomas 'reinforced [the] overarching principle of "sterile corridor" must be adhered to and is necessary to ensure proper management of sources'.[63] It was agreed that the new registration and risk assessment process would be trialled by the DSU and MDID.[64]

232 Item 4 was 'Options for progression of human source structure'.[65] The pilot was due to finish on 1 May 2005, and it was agreed to continue funding and personnel commitment after that date.

233 There was little other evidence regarding the implementation of the recommendations of the Final Report of the Dedicated Source Handling Teams Project. Mr Overland's evidence was that it resulted in a policy decision to separate the management of sources from the Crime Department and to introduce 'sterile corridors' by establishing the SDU in a separate department.[66] Officer Black (a pseudonym) was seconded to the DSU pilot in November 2004 as a handler, and was gazetted as a handler in the SDU in 2005.[67] Based on his evidence I find that the DSU pilot referred to in the minutes of 18 February 2005 was successful, and resulted in the establishment of SDU later in 2005.[68]

234 The evidence does not support findings about the extent to which the other recommendations made by the Dedicated Source Handling Teams Project were implemented.

Chief Commissioner's Instruction 03/05

62 Exhibit P114, 3.
63 Exhibit P114, 3.
64 Exhibit P114, 3.
65 Exhibit P114, 3.
66 **Exhibit D2**: Redacted statement of Simon Overland to the Royal Commission into the Management of Police Informants dated 19 September 2019, [152].
67 Transcript (16 October 2024) 1232:13–30, 1235:22–1236:19 (Officer Black XN), 1286:28–31 (Officer Black XXN).
68 Transcript (16 October 2024) 1247:27–1248:12 (Officer Black XN).

235 At around the same time the SDU was being established on an ongoing basis, the Chief Commissioner's Instruction on Informer Management Policy was reissued. Chief Commissioner's Instruction 03/05 (**CCI 03/05**) replaced previous instruction CCI 07/03, which had been reissued in September 2004 as CCI 06/04.[69] The policy was reissued without change on 20 September 2005, pending a further review of its effectiveness.[70] Significantly, CCI 03/05 did not incorporate any changes to give effect to the recommendations of the Dedicated Source Handling Teams Project. It did not refer to the concept of the 'sterile corridor' and said nothing about risks associated with recruiting a lawyer as an informer.

Victoria Police Human Source Management Practice Guide

236 Mr Black was taken to an undated document entitled 'Victoria Police Human Source Management Practice Guide'.[71] He said that the document was in existence as at 2005, and was updated from time to time, so it was possible that the version of the document in evidence was not the same as the 2005 version.[72]

237 The purpose and scope of the Practice Guide was described in the document:[73]

> This Practice Guide provides systems and instruction for the use and management of Human Sources and Community Contacts (generally referred to as "sources"), which underpins the requirements of the Victoria Police Human Source Policy (refer VPM 111-3) and should be read in conjunction with Force Policies.
>
> The Guide has been developed as a result of extensive research and consultation, locally, nationally and internationally. This Guide is a living document subject to periodic update and comprehensive annual review. The Guide brings together current established best practice and recent developments.

238 The version of the Practice Guide that was tendered was heavily redacted, including the sections concerning source principles, source responsibility, the recruitment of sources, and risk assessment.

239 The Practice Guide included some guidance on ethical considerations relating to the

69 **Exhibit P111**: Chief Commissioner's Instruction 03/05 reissued 20 September 2005, 2.
70 Exhibit P111, 1.
71 **Exhibit P72**: Victoria Police Human Source Management Practice Guide (undated).
72 Transcript (16 October 2024), 1238:27–1239:2 (Officer Black XN), 1293:18–26 (Officer Black RXN).
73 Exhibit P72, 4.

use of informers, referring specifically to breaches of the law by informers. Relevantly, it stated:[74]

> **7. ETHICAL CONSIDERATIONS**
>
> The use of a human source to assist in the investigation of criminal activity may involve an element of deception, intrusion into the privacy of individuals, or cooperation with persons whose reliability and motivations are questionable. It is proper to use human sources in appropriate investigations, but special care must be undertaken to evaluate and supervise their use, and to ensure that individual rights are not infringed and that Victoria Police does not violate the law.
>
> …
>
> ***7.2 Offences Committed By Sources***
>
> In circumstances where it comes to the attention of Handlers that breaches of the law may have been committed by sources outside the sanction of agreements and/or relevant authorities the Controller shall be notified immediately. This information shall be documented and the Officer in Charge notified in every instance. A decision will then be made by the Officer in Charge as to further action to be taken. Sources must never be permitted to believe that Handlers/Controllers sanction or approve of unethical or illegal behavior by the Source, whether in furtherance of a specific target objective or not.

240 However, there was no explicit reference to the ethical obligations of informers, such as confidentiality, or to specific risks associated with the recruitment of a lawyer as an informer.

Review & Develop Best Practice Human Source Management Policy

241 Exhibit P113 was an undated document titled 'Review & Develop Best Practice Human Source Management Policy' (**Best Practice Review**).[75] It is the report of a project, commissioned by Mr Overland in July 2003, to examine the way in which the Crime Department used human source information and compare that with national and international best practice.[76] It was not intended that the project review the Victoria Police Informer Management Policy, which at the relevant time was CCI 07/03.

242 Mr Purton was the project director and a member of the steering committee, which

74 Exhibit P72, 21.
75 **Exhibit P113**: Review & Develop Best Practice Human Source Management Policy (undated).
76 Exhibit P113, 9.

also included Mr Overland. Mr White was a member of the project team.[77]

243 The Best Practice Review made 20 recommendations,[78] including recommendations for the selective implementation of a sterile corridor, the introduction of a multi-level, tiered risk identification model, and the development of a training program for those involved in supervising human source relationships. While there was no direct evidence about the extent to which these recommendations were accepted and implemented, I infer that the Best Practice Review informed the DSU pilot and the subsequent establishment of the SDU.

244 In a section headed 'Ethics and Corruption', the Best Practice Review identified some ethical dangers inherent in the relationship between a human source and a handler, including failure to cope with disclosure and noble cause corruption:[79]

> **Failure to cope with Disclosure**
>
> The criminal justice system presents significant hurdles to the effective use of human sources by law enforcement. The criminal justice system is based on the concept on justice being transparent and open. This is the antithesis of the requirements of a human source system which is based on the covert collection of evidence and intelligence in a manner which will protect the identity of the human source and limit exposure of police methodology.
>
> There is a great temptation by handlers to be economical with the truth by failing to properly disclose the role played by sources in police operations. Managers which condone this course of action or turn a blind eye to its existence fail to develop strategies designed to meet the requirements of a human source system and the court system. This in turn leaves themselves and their organisations open to the risk of compromisation of the source system and\or total corruption.
>
> …
>
> **Noble Cause Corruption**
>
> Put simply, noble cause corruption is the belief that the ends justifies the means, the noble cause being the putting of criminals behind bars. Participation in noble cause corruption often occurs incrementally, with the handler's moral barriers being broken down in small pieces. It may start with the turning of a blind eye to certain activities by the source in the name of achieving a result, but can ultimately end with a belief by the handler that any type of action is justifiable.

77 Exhibit P113, 10.
78 Exhibit P113, 42–4.
79 Exhibit P113, 18–19.

245 The Best Practice Review suggested that these and other potential dangers could be managed by the 'development of appropriately selected, trained and resourced members to perform the roles of handlers and controllers working within a professional and accountable structure'.[80]

246 Under the heading 'Risk Assessment', the Best Practice Review emphasised the need for a 'comprehensive risk assessment' of every human source before registration, and for the risk assessment to be reviewed and updated regularly.[81] However, there was only general reference to several categories of risk attached to human source management, and no discussion of the specific risks of using a lawyer as an informer.

Victoria Police Manual — VPM Instruction 111–3 Human Sources

247 Exhibit P59 was a document from the Victoria Police Manual titled 'VPM Instruction 111-3 Human Sources', issued on 7 May 2007 (**VPM 111-3**). It commenced with the following statement of policy:[82]

> - Human Sources (informers) must only be used for the purposes of intelligence collection and investigative support in a manner in which the integrity of sources, the wider community, police members and Victoria Police is protected.
>
> - Human Sources must always be registered, supervised, properly briefed and clear about the legal and ethical boundaries of their activity.
>
> - Human Sources must not be recruited if there are insufficient Handlers, Controllers or other resources available to manage them safely.

248 Otherwise, VPM 111-3 differed only slightly from CCI 07/03 and CCI 03/05. It did not identify any specific risks associated with using a lawyer as an informer.

249 In relation to risk assessment, VPM 111-3 provided:[83]

> - A risk assessment must be completed by the Handler or Controller for all Covert Human Sources in line with the Human Source Risk Assessment Manual.

80 Exhibit P113, 19–20.
81 Exhibit P113, 21.
82 **Exhibit P59**: Victoria Police Manual — VPM Instruction 111-3 Human Sources dated 7 May 2007, 1.
83 Exhibit P59, 5.

- The risks attached to the management of Human Sources can be categorised into five areas:
  - risk of source being compromised
  - risk of Handler(s)/Controller being jeopardised
  - risk to the integrity of the information
  - risk to Victoria Police of corruption or exposure
  - risk of public harm.
- If a risk assessment identifies a Source as high risk, the HSMU must be contacted for operational advice and assistance.

250 The Human Source Risk Assessment Manual referred to was not in evidence.

251 Section 14 of VPM 111-3 dealt with the status and deactivation of human sources. Three classifications were identified for sources: active, inactive, and unsuitable. A source could be classified as unsuitable if they had become dangerous, unreliable, or an unacceptable high risk to themselves, Victoria Police, or the public.[84] The deactivation process was set out as follows:[85]

> **14.2.2 Requesting deactivation**
>
> Any member involved in the operational management of a Source may recommend the de-activation of a source to the Local Source Registrar. Members requesting de-activation of a Source must:
>
> - consult the Handler, Controller and OIC/Supervisor
> - complete a Human Source Contact Report detailing the reasons for de-activation
> - complete a Source Deactivation Form and forward to Local Source Registrar for approval
> - ensure all outstanding information and contact reports are submitted.
>
> **14.2.3 Deactivation**
>
> Once deactivation is approved the Controller must:
>
> - ensure that the source management file is hand delivered to the Local Source Registrar
> - attend the final meeting, to ensure the Source is fully de-briefed. If the Source is unavailable for a final meeting, submit a report to the Local

[84] Exhibit P59, 12.
[85] Exhibit P59, 12–3.

Source Registrar for approval and forwarding to HSMU.

- where possible, advise the Source that they are no longer:

  – an active Source, or

  – entitled to any reward

Subsequent developments

252 Victoria Police has subsequently developed policies on the use and management of informers that require specific attention to the risks inherent in using a lawyer as an informer.

253 In 2012, a review by Neil Comrie AO APM (**Comrie Review**) recommended that relevant policies be revised to incorporate clear guidelines regarding the use of information that may be the subject of legal professional privilege.[86] Recommendation 3 of the Comrie Review was:[87]

> That all Victoria Police human source policies, associated instructions and practice guides be revised to clearly reflect:
>
> (a) That special considerations apply to the obtaining, usage and management of information that may be subject to legal professional privilege.
>
> (b) That the utmost caution ought to be exercised before engaging a human source who may have conflicting professional duties (eg lawyers, doctors, parliamentarians, court officials, journalists and priests etc).
>
> (c) That prior to the registration of any human source to whom a professional duty may apply, appropriate legal advice must be obtained.
>
> (d) That handlers should not actively seek information from human sources to whom a professional duty may apply which would knowingly cause the human source to breach such a duty.
>
> (e) That source handing and management duties provide no indemnification that would allow those performing such duties to disregard confidentiality notices that may be issued for OPI, ACC or similar types of coercive hearings. Contravening such notices, in the absence of formal authority to do so, carries risk of criminal prosecution.

254 The Victoria Police Manual Policy Rules on Human Sources were updated in

[86] **Exhibit P44**: Report of Mr N Comrie AO APM dated 30 July 2012, 14–20.
[87] Exhibit P44, 136.

September 2014 to clarify the role of human sources and organisational expectations.[88] These updated rules included explicit reference to the use as informers of lawyers or others with confidentiality obligations. It provided that where a human source has 'professional obligations regarding confidentiality', advice should be sought from the Human Source Management Unit (**HSMU**).[89] Relevantly, it stated:[90]

> **4.5 Legal, ethical, medical or psychological considerations**
>
> Where complex legal, ethical or medical considerations are evident with a human source, such as the human source being occupationally bound by other duties, or there is (the presence of medical or mental health issues) advice must be sought from the HSMU.
>
> **4.6 Professional privilege and other circumstances**
>
> - Members must be mindful that some sources as result of their occupations may have professional obligations regarding confidentiality eg. Lawyers, Doctors and Clergy.
> - Handlers must consider the legal and ethical implications for the management of these sources and the information or intelligence they transmit in compiling their registration applications.
> - Members must obtain advice from HSMU management as to the method of handling and recording of any such information or intelligence that may conflict with the professional obligations of the source.
> - The source Interpose file is to accurately reflect the planning and methodology to be followed in managing such a source. HSMU advice is binding and may include the quarantine of information transmitted that may breach such an obligation or relationship.
> - The HSMU will obtain advice from Legal Services Division regarding the quarantine or use of information or intelligence obtained which may breach a professional obligation.
> - The strict adherence of this policy is not intended to discourage the use of high risk sources in such circumstances but to effectively manage the relationship and information obtained in accordance with acceptable legal and community standards.

255 Since 30 September 2024, the registration, use, and management of human sources by Victoria Police has been regulated by the ***Human Source Management Act*** *2023*

88 **Exhibit P60**: Victoria Police Manual Policy Rules, Human Sources dated 29 September 2014, 1.
89 Exhibit P60, 15–6.
90 Exhibit P60, 15–6.

(Vic). The Human Source Management Act now:

(a) prohibits police officers from tasking a registered human source for the purpose of obtaining from the source information that is subject to client legal privilege;[91]

(b) prohibits 'human source activity' unless the human source is registered in accordance with its provisions;[92]

(c) provides a framework for the Chief Commissioner to determine whether to register a 'reportable human source', which includes a person who is reasonably expected to have access to privileged information;[93]

(d) limits the circumstances in which the Chief Commissioner may register a person as a reportable human source for the purposes of obtaining privileged information from the person;[94] and

(e) provides for an application to the Supreme Court for an order authorising the registration of a person as a reportable human source for the purpose of obtaining information that is subject to client legal privilege from that person, and sets out the limited circumstances in which such an order may be made.[95]

256 However, none of these measures was in place when Ms Gobbo was recruited as an informer in 2005.

MS GOBBO'S CLAIMS

Negligent inducement claim

257 The following account of Ms Gobbo's recruitment as a police informer is based largely on her evidence at trial and the audio recording and transcript of her first two meetings with Mr White and Mr Smith. Mr Mansell died in 2019, but his diaries

91 ***Human Source Management Act*** *2023* (Vic), s 15A.
92 Human Source Management Act, ss 3 (definition of 'human source'), 4, 11, 23, 30C, 33, 41.
93 Human Source Management Act, Pt 3, Div 3. The definition of 'privileged information' in s 3 includes information subject to client legal privilege.
94 Human Source Management Act, s 26.
95 Human Source Management Act, Pt 3, Div 3A.

for the relevant days were in evidence. None of Mr Rowe, Mr White, or Mr Smith gave evidence.

258 On 31 August 2005, Ms Gobbo was briefed to appear in the Magistrates' Court at Melbourne in a bail application for Mr Bickley,[96] who had been charged with serious drug trafficking offences. He contacted Ms Gobbo from the Melbourne Custody Centre, asking her to represent him. She understood that he had been given her mobile number by Tony Mokbel, who was separately putting her under pressure to get bail for Mr Bickley. By this time, Ms Gobbo was so closely associated with Mr Mokbel and other members of his family that they appeared to regard her as part of their crew.

259 Ms Gobbo had received a bail summary from police that made it crystal clear to her that Mr Mokbel was involved in the operation, and she was concerned about how she could obtain bail for Mr Bickley without implicating or naming Mr Mokbel. On her way to court that day she was hoping that something would intervene so that she did not have to work out how to do the bail application. She was stressed and teary when she arrived.

260 Mr Rowe and Mr Mansell were at court, and Ms Gobbo spoke with them. She expressed to them the difficulty she felt in being able to do the bail application for Mr Bickley, although she did not recall whether she raised Mr Mokbel's name. Ms Gobbo said that she was 'really distraught' and that Mr Rowe and Mr Mansell saw that she was in tears.[97] She could not recall exactly what they said, but she had the impression that they well knew why she was so distraught. They indicated that they might be able to assist her in relation to her concerns and her distress, and asked if she would be prepared to speak to them later that day. For some reason Mr Bickley was not brought to court that day, and the bail application did not proceed.

261 Mr Rowe and Mr Mansell met Ms Gobbo at lunchtime and drove her to the

96 A pseudonym.
97 Transcript (2 October 2024) 321:9 (Plaintiff XN).

Footscray Market. There they spoke for about 40 minutes 'about how they had an amazing new system in place within Victoria Police and how they might be able to assist me, and that I might be able to assist them'.[98] They arranged for Ms Gobbo to meet later with them and 'some expert or specialist police officer'.[99]

262 Mr Mansell's diary for 31 August 2005 recorded (as best I can make out his writing):[100]

0730	On duty corro + enquiries to
0845	Advised by D/S/C Rowe of conversation he's had with Nicola Gobbo re: her representing [Bickley]
0900	Informed D/S/Sgt O'Brien re same to
0915	Clear to
0930	Arrived Melb Mag Crt re [Bickley]. Aware that Garde-Wilson had not filed a gaol order for [Bickley] [therefore] bail application could not go ahead. Conversation with Gobbo tape recorded conversation that she had been threatened and surveilled by Mokbel. Indicated she wished to speak to us further. Before being interrupted by Garde-Wilson
…	…
1120	RTO updated over the phone D/S/S O'Brien + informed him of intended meeting to
1227	Collected Nicola Gobbo from inner city area. Contact tape recorded. Master held by Rowe to
1400	Gobbo returned to inner city area
1430	RTO updated D/S/S O'Brien then corro + enquiries to
1900	Clear to

263 Although Mr Mansell's diary indicated that the two conversations with Ms Gobbo on 31 August 2005 were recorded, no recording was discovered by the State and none was in evidence.

264 Ms Gobbo's evidence and Mr Mansell's diary entries were supplemented by the following admissions made by the State in its defence:

(a) On 31 August 2005 at about 8:30am, Mr Rowe received a telephone call from

98 Transcript (2 October 2024) 321:31–322:4 (Plaintiff XN).
99 Transcript (2 October 2024) 322:11–12 (Plaintiff XN).
100 **Exhibit P76**: Steven Mansell diary entry, entry for 31 July 2005.

Ms Gobbo regarding a bail application for Mr Bickley,[101] an associate of Tony Mokbel's, to be heard that morning by the Melbourne Magistrates' Court.

(b) At about 9:30am, Mr Rowe, Mr Mansell, and Ms Gobbo had a discussion in the entry area outside two court rooms, during which Ms Gobbo informed Mr Rowe and Mr Mansell about concerns she had arising from her relationship with Tony Mokbel and health concerns she felt she was under because of that relationship. Mr Mansell said to Ms Gobbo words to the effect that she ought to 'get on board'. Ms Gobbo said words to the effect that she was concerned about her safety and she wanted assurances as to her safety from Victoria Police, and Mr Rowe said words to the effect that Ms Gobbo would be managed by specialist police officers.

(c) Later on 31 August 2005, at around 12:27pm, Mr Mansell and Mr Rowe had a discussion with Ms Gobbo at a carpark in the inner west of Melbourne regarding Ms Gobbo's interest in cooperating with Victoria Police and what information she may be able to provide.

(d) During that discussion, Ms Gobbo said that she wanted to get information 'off her chest', particularly regarding Tony Mokbel. She said she felt conflicted in respect of her client Mr Bickley, who was an associate of Mr Mokbel's. Mr Mokbel had told her that he expected Mr Bickley not to cooperate with police, but she believed it was in Mr Bickley's best interests to do so. Ms Gobbo said that she felt aligning herself with Victoria Police was her way out of the position she had gotten herself into by becoming a social relation to members of the Melbourne criminal underworld. Mr Mansell, Mr Rowe, and Ms Gobbo discussed the process of cooperating with police. Ms Gobbo said words to the effect that she would be killed if it became known in the Melbourne criminal underworld that she was cooperating with police, and

[101] A different pseudonym was used in the Defence to the fourth amended statement of claim dated 10 October 2024, which I understood to be a reference to the person referred to in this proceeding by the pseudonym Mr Bickley (**Defence**).

she thus wanted assurances she would be looked after if she gave information to police. Mr Rowe and Mr Mansell told Ms Gobbo that if she did cooperate, she would be managed by officers who were specialists in dealing with human sources.

265 A 'Request For Assistance Source Development Unit' form for 'Human Source Registration Number 21803838' was apparently completed on 7 September 2005.[102] The requesting member was Mr Hill of MDID, the current handler was Mr Mansell, and the current controller was Mr O'Brien. The nature of the assistance required was 'management', for a source 'capable of providing quality intelligence regarding MOKBEL cartel'.[103]

266 According to Ms Gobbo's evidence at trial, the meeting at which she was introduced to Mr White and Mr Smith took place in an apartment in Southbank, on the same day as her conversation in the car park with Mr Rowe and Mr Mansell.[104] However, it is clear from other evidence that the first meeting with Mr White and Mr Smith took place on the evening of Friday 16 September 2005.

267 That evidence included the source management log for human source 21803838, the human source number initially assigned to Ms Gobbo.

(a) The first entry on 7 September 2005 noted a request from Mr Hill at MDID to assist with assessment of 'HS' — the shorthand used to refer to Ms Gobbo — who 'has approached MANSELL and CHEESMAN, in emotional state, concerned for her welfare, wants to talk re association with MOKBEL crew'.[105]

(b) An entry on 8 September 2005 recorded that Mr Hill, Mr White, Mr Mansell, and Mr Rowe met and were briefed about Ms Gobbo. The entry continued: 'HS concerned she is under surveillance and may be killed. DSU to meet with

102 Exhibit P48, 1.
103 Exhibit P48, 1.
104 Transcript (7 October 2024) 542:24–543:4 (Plaintiff XN).
105 **Exhibit D7**: 21803838SML – source management log for Gobbo while registered as 3838 (undated), 1.

same for assessment'.[106]

(c) An entry on 16 September 2005 noted a meeting between Mr White, Mr Smith, Mr Mansell, Mr Rowe, and Ms Gobbo, as follows:[107]

> Assessment i/v. HS intel re MOKBEL, [COOPER], LANTIRI and Op QUILLS. Concern re HS welfare, afraid of MOKBEL family. Well known to all brothers, and claims Tony MOKBEL is currently seeking took bribe VICPOL MDID member with view to ascertaining evidence against him re Op QUILLS, and also wants to steal tape recordings re Op KAYAK.

268 Mr Mansell's diary recorded the following entries for 16 September 2005:[108]

…	…
1600	With Rowe on standby to meet with informer Then met with informer and RV with [Sandy White] and [Peter Smith] to
2200	Clear above to
2330	Off duty

269 The State admitted that at this first meeting, Ms Gobbo expressed concern for her safety and, in response, representatives of the SDU provided her with information as to security measures that would be put in place to protect her safety.[109]

270 The meeting on 16 September 2005 went for more than two hours. The entire meeting was recorded, and the audio recording was later transcribed,[110] providing clear evidence of what Ms Gobbo was told during the meeting about protection of her identity, confidentiality of information provided, and her safety. The following exchanges are relevant.

271 Early in the meeting, Ms Gobbo asked whether the meeting was being recorded. Mr White told her that it was not, but that he was about to start a recorder. Ms Gobbo said she was very concerned about that. Mr White asked her to tell him what

106 Exhibit D7, 1.
107 Exhibit D7, 1.
108 Exhibit P76.
109 See [99] above.
110 Exhibit P52: Transcript of tape recorded conversation between Officer Peter Smith, Sandy White and Nicola Gobbo (**Exhibit P52 transcript**), Audio document VPL.0005.0037.0014; Exhibit P53: Transcript of tape recorded conversation between Officer Peter Smith, Sandy White and Nicola Gobbo (**Exhibit P53 transcript**), Audio document VPL.0005.0051.0136.

her concerns were and he would see if he could allay them. Ms Gobbo said that once something was recorded, it was there, it was somewhere, and 'all it takes is for someone to issue some sort of subpoena and it can be obtained'.[111] She said that she knew how the system worked. Mr White responded:[112]

> [Mr White]: Yeah. Oh, you are to a certain extent. The first thing is, accepting the fact that it's there, we can't deny that, the first thing you've got to consider is, is it secure? Now, I don't have any intention of telling you how it's secured or where it will be.
>
> Ms Gobbo: I don't – yeah, I don't know.
>
> [Mr White]: All I can say to you is that it would be a hundred per cent secure and it won't be anywhere connected with where Steve and [Rowie work].[113] Is it subject to subpoena? Yeah, it is subject to subpoena. If people know that it is exists, that's the first thing. You know it exists.
>
> Ms Gobbo: Well, I'm not gunna tell anyone.
>
> [Mr White]: Well, that's I'm counting on that.
>
> Ms Gobbo: …
>
> [Mr White]: And the second thing is it's a very privileged conversation. Now, I know there can be arguments that can overcome that.
>
> Ms Gobbo: But you don't understand. The first thing anyone will claim – I mean, the way it works is I issue a subpoena for something - - -
>
> [Mr White]: Mm, mm.
>
> Ms Gobbo: - - - the police claim public interest immunity - - -
>
> [Mr White]: Mm'hm.
>
> Ms Gobbo: - - - that is the answer to the question from a crook's point of view.
>
> [Mr White]: Yeah. Well, you've got to ask who's gunna subpoena it, I suppose, or we'll actually get to that or we're going to have an argument about it.

272 Mr Smith then said that they wanted to know what Ms Gobbo's concerns were:[114]

> Ms Gobbo: That's the principal concern.
>
> [Mr White]: O.K.

111 Exhibit P52 transcript, 6.
112 Exhibit P52 transcript, 6–7.
113 The words 'Rowie work' were not transcribed but were audible in the audio recording.
114 Exhibit P52 transcript, 8–9.

Ms Gobbo: I don't care how many notes you take but I'd rather notes be notes. If there's no – no tape-recording, at least no-one can get it somehow.

[Mr White]: Well, let me – let me just put this to you: are you going to be inhibited by what you say if I run a tape-recorder?

Ms Gobbo: Yes.

[Mr White]: O.K. That kind of defeats the purpose of having a meeting with you - - -

Ms Gobbo: O.K.

[Mr White]: - - - if we can make an assessment of whether you've got something valuable to offer.

Ms Gobbo: OK.

[Mr White]: Are you going to be satisfied if I say to you that firstly the tape is secured in a place where it can't be got and, secondly, the only people that know it exists will be yourself and us?

Ms Gobbo: Only these people - - -

[Mr White]: Does that satisfy you?

Ms Gobbo: Yeah.

273 The meeting proceeded on the (false) understanding that it would not be recorded, but that any future meetings might be. Ms Gobbo then enlarged on her concerns:[115]

Ms Gobbo: The reality is, if anyone - look, I've said this in the …….. meetings, I'm dealing with someone who scares me enough that no matter what you people do, if anyone found out about it, I'm just - nothing you can do will protect me.

[Mr White]: Yeah. Well - - -

Ms Gobbo: And don't misinterpret that as not having faith in the police, but - - -

[Mr White]: I'll be – I'll be completely frank with you. If you didn't have that concern and if you had total faith in the police, then I think you're probably fairly foolish because there's a bit of a history of things going wrong.

Ms Gobbo: Yeah.

[Mr White]: And that's why we've taken steps to do something significantly different with how we're managing you today.

Ms Gobbo: Yep.

[115] Exhibit P52 transcript, 11–2.

> [Mr White]: You know, we didn't send you down to Middle Park just to jerk you round. There was specific reasons for that.
>
> Ms Gobbo: I get that, yep.
>
> [Mr White]: And the same as coming here and the process we've gone through here, and if we continue meeting, you'll find that it will change every single time. [Mr Smith] and myself have been given the task of looking after you if this relationship develops and we'll be available to you 24/7. So this – there'll be a whole heap of changes which we'll go into looking after you and we can talk about that in due course. But, you know, your concerns are very, very valid. I'm not going to sit here and say that bad things haven't happened in the past because you know as well as anybody else that it has. We know that the person you want to talk about has got the capacity to hurt people, significantly hurt people, and you are in a position of concern, I suppose, and we're taking that seriously.

274 Mr White then returned to the topic of recording their meetings, making the point that recordings would be as much for Ms Gobbo's protection as anyone else's, because they would be proof of any promises made to Ms Gobbo. He continued:[116]

> [Mr White]: Yeah. So we need to discuss that sort of issue as well. So as I say, we'll work through these sort of things. I can't say to you, "Trust us completely," and I certainly can't trust you completely. So, you know, if you've got concerns, if you've got questions, you ask them. If I can answer them, I'll answer them. If I can't answer them, I'll tell you. I can't lie ..... so ……. That's my little introductory spiel.
>
> [Mr Smith]: Perhaps also we could say that we are here to look after your interests which in turn looks after ours.
>
> Ms Gobbo: Yep.
>
> [Mr Smith]: If we do the right thing by you, that – that covers us as well. We're not here to - all these things that may be put in place down the track, they're to cover both sides but they're primarily to look after you.
>
> Ms Gobbo: OK.

275 The discussion then turned to the information that Ms Gobbo could provide. Mr White asked her to tell him everything she knew about Tony Mokbel, and Ms Gobbo asked how many weeks they had booked the room for. Mr White responded:[117]

> [Mr White]: Well, to be quite honest, if you want to go down that track we will – it will take as long as it takes.

116 Exhibit P52 transcript, 13–4.
117 Exhibit P52 transcript, 15–7.

Ms Gobbo: Can I just – can we go back one - - -

[Mr Smith]: Yeah.

Ms Gobbo: I've just got one question. Can I even know where you're from or not?

[Mr White]: No, at this point, no.

Ms Gobbo: O.K. Maybe down the track?

[Mr White]: Maybe.

Ms Gobbo: Maybe down the track.

[Mr White]: Yeah. As I say, you do represent a certain threat to us - - -

Ms Gobbo: Yeah.

[Mr White]: - - - which I'm not gunna amplify.

Ms Gobbo: I understand that, but you can understand – say, for example, I need to find you one day - - -

[Mr White]: Yeah.

Ms Gobbo: - - - I'm gunna sound like a spastic, "I met these two people," not …… I mean, "I know they're police, but I don't even know if they were police."

[Mr White]: What we'll do before you leave here today, we'll set up some contact arrangements - - -

Ms Gobbo: O.K.

[Mr White]: - - - if – if you want to continue on and if we want to continue on. So at that – there'll be an occasion where, if you are going to go down that track and it's worthwhile to everybody, you'll have somebody you can ring and it'll be [Mr Smith].

Ms Gobbo: O.K.

[Mr White]: And you'll have contact 24/7. But I'll say this now and I'll say it later: you know a lot of these people.

Ms Gobbo: Yep.

[Mr White]: In some respects, you're a big threat to yourself. If we start to go down this track – and I know this is stating the bleeding obvious – but we just see people mess up time and time again in this situation. The only person that you can have contact with is [Mr Smith]. As of today, if you're comfortable with where you want to go with this, and it is of value, you won't be talking to Steve or any other person you know 'cause it can only end in tears that way.

Ms Gobbo: Yeah, I know, I know.

[Mr White]: All right. It's just got to be one point of contact and that's it.

276 Ms Gobbo then started to talk about Tony Mokbel and his associates. She spoke at length, about a wide range of matters, with minimal prompting from Mr White and Mr Smith. She referred to several situations that were causing her concern for her safety, her professional position, or both. These included the recent bail application for Mr Bickley, and the risk of being identified as the barrister for a person who had become a Crown witness and 'turned on half the underworld'.[118]

277 Ms Gobbo spoke freely about her clients and her work as a barrister. Even in the early stages of that first meeting, she disclosed privileged communications and confidential information about her clients. For example, she described the advice she gave Mr Bickley about applying for bail and outlined his instructions to her.[119] She spoke of Mr Mokbel's upcoming Commonwealth trial and his interest in getting rid of some tapes that were critical evidence.[120]

278 After Ms Gobbo had described her first meeting with Tony Mokbel, Mr White turned the conversation to her motivation:[121]

> [Mr White]: So tell me this: what's the best-case scenario for you at the moment?
>
> Ms Gobbo: Best-case scenario? Find a sugar daddy and get out of the law.
>
> [Mr Smith]: You're in the wrong room.
>
> Ms Gobbo: No …….. look, when I started practising, it was really – it was exciting. I had a lot of passion and a lot of drive. I had a lot of enthusiasm. There was a lot of variety. There was the excitement of, "Where am I going today? Who am I going to meet?" I can't believe ……. it was – I was – I'm burnt out, I'm cynical. I can't deal with the stress of the worry any more and now, like, with people like Mokbel, we've got that added stress of not to – not just his dishonesty towards us but [redacted] are watching, Purana's watching, probably the Drug Squad is watching, who – whoever else.

279 Ms Gobbo digressed into discussing Purana's focus on proceeds of crime, which she

118 Exhibit P52 transcript, 19.
119 Exhibit P52 transcript, 26–7.
120 Exhibit P52 transcript, 42–4, 50–4.
121 Exhibit P52 transcript, 62.

said had had 'an amazing effect',[122] and then returned to listing the sources of her stress. The next on the list was that she could no longer rely on being insulated from her clients by an instructing solicitor, both because Mr Mokbel contacted her directly and because a particular solicitor he often used was herself under investigation. Ms Gobbo then said 'I'm here because I've had enough'. She continued:[123]

> Ms Gobbo: Really, I've had enough. It's not about me saying I need help because of whatever, I just want – I've had it.
>
> [Mr White]: Well, I - - -
>
> Ms Gobbo: And I don't know the way out. I can't - - -
>
> [Mr White]: Well, that's what I want to get to now. All right? Tony and – and - - -
>
> Ms Gobbo: Yeah.
>
> [Mr White]: - - - others - - -
>
> Ms Gobbo: Yep.
>
> [Mr White]: - - - they're – they're significant players, significant …….
>
> Ms Gobbo: Well, that's why nothing will ever happen to Tony because no-one will ever knock him off his perch, even though he owes stacks of money everywhere - - -
>
> [Mr White]: Yeah.
>
> Ms Gobbo: - - - because everyone knows, you kill him, the brothers will kill you.

280 After another digression, Ms Gobbo said that she would like to go back to the way it was — 'no pressure, no paranoia, not worried about what he thinks of me when I get to court'.[124] She said she had too many drug briefs, and commented that she could recognise unidentified voices on telephone intercepts and knew people's car registrations. She thought she had 'had it' with the people she was acting for, rather than with the law.[125] She said she was increasingly alarmed about her own exposure, because she did care what people thought.

122 Exhibit P52 transcript, 63.
123 Exhibit P52 transcript, 65–6.
124 Exhibit P52 transcript, 69.
125 Exhibit P52 transcript, 69–70.

281 Mr White responded:[126]

> [Mr White]: Well, I can tell you this with a great deal of certainty, and there's very little I wouldn't tell you, I suppose, during the course of our relationship - - -
>
> Ms Gobbo: I …….
>
> [Mr White]: - - - depending on how long it goes - - -
>
> Ms Gobbo: Yep.
>
> [Mr White]: - - - but I can tell you that your relationship with Tony and the others only can have one ending – well, it can actually have two, but both of them …….
>
> Ms Gobbo: Couldn't agree more, because look at anyone – look at anyone who's had any sort of relationship with them.
>
> [Mr White]: Yeah.
>
> Ms Gobbo: It only ends one of two ways.
>
> [Mr White]: Yeah, yeah. There's a pretty solid past history of outcomes for people, But - - -
>
> Ms Gobbo: But I think it can be - - -
>
> [Mr White]: But the thing I've got - - -
>
> Ms Gobbo: I think it can be - I hope that it won't be one of those two endings, the same two you're thinking of - (1) is gaol or (2) is death .....
>
> [Mr White]: Probably not in that order, I …….
>
> Ms Gobbo: …….. could be – look, ideally, what would be fantastic would be you arrest him, ideally …….. that would be – I know it's a terrible, terrible thing to say to anyone.
>
> [Mr White]: Mm.
>
> Ms Gobbo: But – and that's what – I mean, I thought that that was gunna happen, probably not now but back - - -
>
> [Mr White]: Yep.
>
> Ms Gobbo: ……. that his case ends up finishing or he gets charged with something else and then he's put in a position where he is never going to get bail 'cause it's strong enough and big enough and serious enough that he'll never get bail and then he'll plead.

282 Ms Gobbo went on to give her assessment of the circumstances in which Mr Mokbel

[126] Exhibit P52 transcript, 72–3.

would plead guilty to charges. She envisaged that he would be in prison and that things would change, saying 'God, it would relieve so much pressure off me 'cause you're only allowed to ring between 9.00 and 3.15'.[127]

283 Mr White — or perhaps Mr Rowe or Mr Mansell — commented that Ms Gobbo looked seriously stressed about the bail application and it was knocking her health around.[128] She agreed that it was all knocking her health around. She spoke about how often Mr Mokbel called her, and said she did not know how to brush that off, or what the response would be.[129] Mr White moved the discussion on to the best way to have Mr Mokbel locked up, which elicited a long response from Ms Gobbo.

284 Ms Gobbo continued to speak freely about Mr Mokbel, his brothers, and other clients and former clients. After a while, Mr White asked if she was 'happy to keep talking about Tony with us?'. Ms Gobbo said that she was.[130]

285 Mr White remarked that there was a lot of information, and that they needed to look and collect their thoughts, and check the accuracy of some of the things Ms Gobbo had said.[131] He said she was rightly concerned about her reputation, and asked what would have to occur for her to re-establish her reputation if the Mokbels went to gaol.[132] Ms Gobbo responded that she would have to stop acting for drug dealers and organised crime figures, and that her ideal situation was to have a business like a car wash.[133] She confirmed that she could make a living outside of lawyering, and adverted to the possibility of having a child and working part time.[134] Ms Gobbo then spoke about the stress of her current work, and mentioned the stroke she had suffered in July 2004.[135]

286 Mr White explained that any contact from that point onwards would be through a

127 Exhibit P52 transcript, 75.
128 Exhibit P52 transcript, 75.
129 Exhibit P52 transcript, 76.
130 Exhibit P52 transcript, 95.
131 Exhibit P52 transcript, 97–8.
132 Exhibit P52 transcript, 98–9.
133 Exhibit P52 transcript, 99–100.
134 Exhibit P52 transcript, 103.
135 Exhibit P52 transcript, 106.

phone number they would give her for Mr Smith. He said they could talk to her about her own security, and some of the things they would do. Ms Gobbo said that she was 'utterly paranoid' about her security.[136] Mr White agreed that she should be, and said that there was a range of things she needed to be concerned about, including her reputation and the 'pretty ordinary people' she was surrounded by.[137] He continued:[138]

> [Mr White]: O.K. So you've definitely got to do something.
>
> Ms Gobbo: Yeah.
>
> [Mr White]: You make that decision. Now, whether you want to continue it or not is entirely up to you.
>
> Ms Gobbo: No, I made the decision about 12 months ago.
>
> [Mr White]: Yeah.
>
> Ms Gobbo: ……. trying to sort of ……. had a lot [conversations] with Stuart. I need someone who – like, I'm sure he'll tell you if you speak to him, and you may not be able to speak to him, bearing in mind that no-one is supposed to know I'm talking to you here - - -
>
> [Mr White]: We - we will not touch base with Stuart or any other person who might know or might have even made some overtures towards - - -
>
> Ms Gobbo: Yeah.
>
> [Mr White]: This stays within this group of five here.
>
> Ms Gobbo: O.K.

287 They then discussed the fact that Ms Gobbo was recognisable — 'a bit of a celebrity' — and that if word got around that she was talking to police it would spread like wildfire.[139] Mr White said 'we'll do things to make sure that it's totally secure'.[140] Near the end of the conversation the following exchange took place:[141]

> [Mr White]: If you decide you're not happy with it, if you decide you've had enough, you decide it's not working, you stick your hand up and say you want out, that's it, it's over.

136 Exhibit P52 transcript, 111.
137 Exhibit P52 transcript, 112.
138 Exhibit P52 transcript, 113–4.
139 Exhibit P52 transcript, 114.
140 Exhibit P52 transcript, 115.
141 Exhibit P52 transcript, 116.

> Ms Gobbo: I just need some – this I see is a way out of it all and not end up in either gaol or dead. I don't know what else to do …… I could go away for six months but that's just running away. It's not dealing with the problem, not dealing with issues.

288 In conclusion, Mr White referred to the objective of the first meeting:[142]

> [Mr White]: The objective today was really just to sort of test the water with you, see where you could be useful - - -
>
> Ms Gobbo: Yep.
>
> [Mr White]: - - - and most of all, make sure that you're comfortable continuing on. If you're comfortable to have another meeting next week, we've achieved our objective today.
>
> Ms Gobbo: O.K.
>
> [Mr White]: There's no reason to hurry this.
>
> Ms Gobbo: Only – only my health, that's all.
>
> [Mr White]: Well, hopefully now that you're – you're actually …… direction.
>
> [Mr Mansell]: It might feel like a great relief off your shoulders.
>
> Ms Gobbo: I did feel – I do feel relieved.
>
> [Mr White]: Yep.
>
> Ms Gobbo: I feel sick talking about it or coming to grips with the fact that I am talking about it but, you know, it's always a relief to be able to talk about something. …

289 Ms Gobbo's evidence at trial was that, by the end of the meeting on 16 September 2005, she understood that information provided by her would never be made public, would be kept securely, and that she need not be concerned about it coming out.[143] She also understood Mr White to have said that what they talked about would remain confidential and would not be disseminated in a way that could cause her any difficulties.[144]

290 Victoria Police records indicate that Mr Smith or Mr White made a formal request to register Ms Gobbo as an informer on 16 September 2005. The initial form requesting

142 Exhibit P52 transcript, 126–127.
143 Transcript (7 October 2024) 549:2–10 (Plaintiff XN).
144 Transcript (7 October 2024) 548:26–549:1 (Plaintiff XN).

SDU assistance records that an SDU assessment was conducted by Mr Smith on 16 September 2005, and the source was assessed to be strategically or tactically viable, high risk, and high value.[145] The recommended action was 'SDU management', which was recorded as commencing that day. An 'Informer Registration/Reactivation Application' form was completed and dated 16 September 2005, providing Ms Gobbo's details for registration by the LIR, Mr Thomas.[146] The registration application recorded Mr Smith as Ms Gobbo's handler, and Mr White as her controller.

291 At the same time, Mr Smith completed the first of many informer contact reports in relation to Ms Gobbo.[147] The body of the report is a detailed account of the initial meeting that evening. At the end of the report, Mr Smith included the following comment:[148]

> Not surprisingly, HS presents as a mature and educated person. HS becomes emotional when discussing stroke. Handlers tend to believe HS statements re wanting to change hectic and stressful lifestyle because of dealing with MOKBEL clan, however, other motivations have not yet been uncovered must be explored. Initial impression is that, at the very least, this HS can definitely be of high value in relation to current intelligence on MOKBEL family and associates.

292 A second meeting took place between Ms Gobbo, Mr White, and Mr Smith on 21 September 2005, starting at about 6:30pm.

293 The second meeting was covertly recorded from the beginning, and there was a lengthy discussion about whether Ms Gobbo would agree to a recording. Mr White said that a recording would be a protection measure for everyone concerned.[149] Ms Gobbo disagreed that it was for her protection, and said that she was concerned about her safety, and not being able to be somehow found out by anybody.[150] The discussion continued:[151]

145 Exhibit P48, 2.
146 **Exhibit P49**: Informer Registration dated 16 September 2005.
147 **Exhibit P119**: 21803838-ICR001.
148 Exhibit P119, 6.
149 Exhibit P53 transcript, 20–22.
150 Exhibit P53 transcript, 20.
151 Exhibit P53 transcript, 22–5.

[Mr White]: Yeah. Well, all I can say to you on that score is as time progresses, you - you will make your own judgment, whether you think you're being professionally or not.

Ms Gobbo: And likewise you will with me.

[Mr White]: Yeah, exactly. But - - -

Ms Gobbo: And I understand that's a learning – that's a – for any situation, it's a trust-building thing.

…

[Mr White]: [Nobody] else is going to be involved in this with the exception of one other person in my eyes.

Ms Gobbo: Yep.

[Mr White]: Right. There won't be any investigators from MDID, there won't be any investigators from St Kilda Road, there won't be any other policemen involved in the relationship with you unless you choose to speak to Steve or Dale or - - -

Ms Gobbo: Not a - - -

[Mr White]: - - - Stuart or any of those people and I'm advising you that you don't.

Ms Gobbo: Not a chance.

[Mr White]: From last Friday, all those people - - -

[Mr Smith]: That's it.

[Mr White]: - - - are out of the loop. The way that we meet you will be – it'll – it'll …… day, it'll be a different occasion and we won't be ……. take certain precautions to make sure that you're not being followed, for example - - -

Ms Gobbo: Yeah.

[Mr White]: - - - or – or people ……. see us meeting.

Ms Gobbo: Yeah.

[Mr White]: And that might seem a little bit over the top on occasions but it's for your security …….. we get to go home in a reasonably secure sort of fashion. You're the one that's at risk. So, yeah, we'll take all those steps to make sure that things don't go bad.

Ms Gobbo: What about in terms of, like, daybooks and diaries and things? If, you know – I always worry about them being subpoenaed, looked at.

[Mr White]: Yeah.

Ms Gobbo: Accidentally you give that page, my name's in it.

[Mr White]: Yeah.

Ms Gobbo: That sort of stuff.

[Mr White]: Your name doesn't appear anywhere. That's – that's the first thing. I'm not gunna explain how the system works.

Ms Gobbo: And I'm not asking you.

[Mr White]: But I'll – I'll give you that guarantee that your name is not going to appear anywhere.

294 Ms Gobbo commented that she did not know their real names, or even if they were police:[152]

[Mr White]: Well, who we are is – yeah, maybe that might be the case, but here we are and we're people that have been entrusted to make sure that you're managed properly and to – to - - -

Ms Gobbo: It sounds like …….

[Mr White]: Yeah, exactly.

Ms Gobbo: Yeah.

[Mr White]: Exactly.

Ms Gobbo: And I just hope that all the links – however many links there are – are people that my clients can't get to or haven't got themselves AWOL somewhere, and I don't know the – I really don't know the answer to that 'cause I don't know who are on their payroll.

[Mr White]: I'd like to be able to sit here and say to you that that's just not possible but - - -

Ms Gobbo: Oh - - -

[Mr White]: - - - I couldn't say that in all honesty.

295 Soon afterwards, Mr Smith explained the separation between investigators and handlers:[153]

[Mr Smith]: … I think it was mentioned last time – or [Mr White] just said it now – we – we don't – you won't be meeting investigators. We don't investigate. We'll be talking to you.

Ms Gobbo: O.K.

[Mr Smith]: Any action that – that police take from that will be information obviously passed on to our office and it'll be done in such a way that – well,

152 Exhibit P53 transcript, 26.
153 Exhibit P53 transcript, 30–1.

the person who gets information will not even know that it came through a person giving information to police. It'll be very sanitised and – and certainly obviously to protect you, even to protect the fact that someone's – someone else is involved.

Ms Gobbo: Yep.

[Mr Smith]: So that's – I think it's important that you – that you know that that's how we – how we operate.

Ms Gobbo: I assumed that you'd have to do something like that because - - -

[Mr Smith]: Yeah, yeah.

Ms Gobbo: - - - otherwise it could be – it could be something tracked back to me.

296 About 30 minutes into the meeting, Mr White turned the other recording device on:[154]

Ms Gobbo: And you assure me that no-one's getting copies of that?

[Mr White]: I guarantee you that nobody will get copies of this and this sits in a place that there's four people know where it sits – five, all working - - -

Ms Gobbo: Serious? Five people though?

[Mr White]: All work in my office, all doing – all ……..

Ms Gobbo: Secret schoolwork.

[Mr Smith]: And there's – there's a lot more to the security aspect than we're going to tell you.

Ms Gobbo: I don't want to know.

[Mr Smith]: But – but it's highly, highly secure.

297 The conversation turned to housekeeping matters, including Ms Gobbo's home and work addresses and telephone numbers, and how she and Mr Smith would manage their telephone communications. Ms Gobbo gave details of her health issues, in particular her stroke the previous year.

298 Mr Smith then began to ask Ms Gobbo about Mr Mokbel, starting with his bail arrangements, close relationships, and gambling habits.[155] Ms Gobbo spoke about

154 Exhibit P53 transcript, 32–3.
155 Exhibit P53 transcript, 57–69.

several associates of Mr Mokbel's, and whether they were or might be cooking drugs or laundering money for him. These associates included 'Mr Cooper',[156] who Ms Gobbo described as 'a client of mine'.[157] Ms Gobbo provided telephone numbers for two of Mr Mokbel's associates, and information about where they might be found.

299 After a while, Mr Smith suggested they 'home in on the main man' and asked Ms Gobbo to 'tell us what we don't know about him'.[158] She described how she had developed a practice of meeting with several of Mr Mokbel's associates at the same time, and how that regular meeting had moved from her office to a restaurant.[159] She spoke about Mr Mokbel's multiple mobile phones, and gave the telephone number she had for him.

300 At that point in the interview, Mr Mokbel called Ms Gobbo on her mobile phone. She answered the call, asked where he was and who he was with, and said she would not be long.[160] Mr Smith and Mr White were curious about whether she intended to call Mr Mokbel back or meet him, and where that would occur. They encouraged her to go and meet with him after the interview, and she said she was happy to do that.

301 While Ms Gobbo was being returned to her car, another client, Rob Karam, called on her mobile phone.[161] She called him back, they spoke briefly, and he then called her back from another number.[162] They arranged to meet at her office a short time later. Mr White asked Ms Gobbo to call Mr Smith when she was about to leave the meeting with Mr Karam, so that they would know she was on her way to meet with Mr Mokbel.[163] The recording ended soon afterwards, at 9:40pm.

156 A pseudonym.
157 Exhibit P53 transcript, 78.
158 Exhibit P53 transcript, 147.
159 Exhibit P53 transcript, 153–4.
160 Exhibit P53 transcript, 158.
161 Exhibit P53 transcript, 184.
162 Exhibit P53 transcript, 189–190, 195.
163 Exhibit P53 transcript, 196–8.

302 I now turn to the specific questions for determination in relation to Ms Gobbo's claims that she was negligently induced to become a police informer.

Duty of care

(1) On or about 16 September 2005, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith give assurances to Ms Gobbo that, if she became an informer:

(a) her identity would be protected;

(b) the information she provided would remain confidential to Victoria Police; and

(c) she would remain safe?

Mr Rowe and Mr Mansell

303 During their two conversations with Ms Gobbo on 31 August 2005, Mr Rowe and Mr Mansell told her that, if she cooperated with police, she would be managed by officers who were specialists in dealing with human sources.[164] Ms Gobbo said that during that conversation 'there was an assurance that they had a system in place whereby they could assist me in circumstances where I would not need to be concerned about anybody finding out', although she could not recall the specific words used.[165] This evidence was the high point of the evidence against Mr Rowe and Mr Mansell, and does not support a finding that they gave the alleged assurances to Ms Gobbo.

304 Mr Rowe and Mr Mansell introduced Ms Gobbo to Mr White and Mr Smith, and were present for part of the initial meeting on 16 September 2005. I do not accept the submission made for Ms Gobbo that, by their presence at the meeting, Mr Rowe and Mr Mansell affirmed or adopted assurances given by Mr White and Mr Smith. I have listened carefully to the recording of the meeting, and it is simply not possible to tell when Mr Rowe and Mr Mansell were present during the meeting. Ms Gobbo's recollection was that they stayed for a little while and then left.[166] When they were present, they were passive participants. Their role was limited to handing over management of Ms Gobbo to the specialist officers in the SDU — Mr White and

164 See [Error: Reference source not found] and [264] above.
165 Transcript (7 October 2024) 542:6–13 (Plaintiff XN).
166 Transcript (2 October 2024) 322:17–23, 323:3–12 (Plaintiff XN).

Mr Smith.

Mr White and Mr Smith

305 Ms Gobbo's evidence of assurances given by Mr White and Mr Smith during the meeting on 16 September 2005 was that they told her 'we're a special secret unit within Victoria Police who can assist you and protect you and it will be a secret'.[167] While she could not be specific about the words used by Mr White, she recalled him assuring her that it was a special, highly trained, dedicated unit that was doing things vastly differently to the way they had been done before, and that she should not have any concerns about any information coming back to haunt her.[168] She also recalled an assurance being given at the second meeting that only a small number of police would know about her becoming an informer, and that information she provided would be sanitised or disguised so that investigators would not know where it had come from.[169]

306 Ms Gobbo's recollection is not borne out by the recording and transcript of the meetings on 16 and 21 September 2005. While Mr White and Mr Smith did give Ms Gobbo some assurances, these were limited and for the most part heavily qualified.

307 Early in the first meeting, Ms Gobbo expressed strong concerns about the meeting being recorded, because a recording could be subpoenaed and obtained. Mr White assured her that any recording would be stored in a place that was 'a hundred percent secure' and not connected with MDID, and that the only people who would know it existed would be the people present.[170] At the same time, Mr White acknowledged that it could be subject to a subpoena and that there were arguments that could overcome a claim of privilege.

167 Transcript (2 October 2024) 323:24–6 (Plaintiff XN).
168 Transcript (7 October 2024) 548:9–15 (Plaintiff XN).
169 Transcript (7 October 2024) 552:13–23 (Plaintiff XN).
170 Exhibit P52 transcript, 6.

308 Mr White outlined several measures that would be taken to protect Ms Gobbo's identity. He explained that no investigators or other police would be involved in handling her as an informer, and counselled her not to speak to certain investigators she had been in contact with. He said that 'This stays within this group of five here', and went on to outline the things they would do to ensure that their meetings would be secure and that word did not get around that she was talking to police.[171] But he agreed with Ms Gobbo when she said that, if anyone found out she was talking to them, nothing they could do would protect her. He acknowledged that it would be foolish of her to have total faith in the police, 'because there's a bit of a history of things going wrong'.[172] He said that while there were things they would be doing to look after her, her concerns were 'very, very valid';[173] she was in a position of concern and they were taking that seriously.

309 At the second meeting, Mr White guaranteed that nobody would get copies of the recording of the meeting. He said that it would sit in a place in his office, where only five people worked.[174] Mr Smith added that it was 'highly, highly secure'.[175] The guarantee was specific to recordings.

310 Mr White again explained that Ms Gobbo would not be meeting investigators, that any information that was passed on would be very sanitised to protect her, and that anyone receiving it would not know that it came from a person giving information to police.[176] Ms Gobbo agreed in cross-examination that she understood that the information she provided to her handlers would be passed on to investigators, and would be used to put people in gaol.[177]

311 Mr White and Mr Smith gave no assurance to Ms Gobbo that she would remain safe. While they outlined some measures that would be taken to protect her safety,

171 Exhibit P52 transcript, 115.
172 Exhibit P52 transcript, 11.
173 Exhibit P52 transcript, 12.
174 Exhibit P53 transcript, 32–3.
175 Exhibit P53 transcript, 33.
176 Exhibit P53 transcript, 30–1.
177 Transcript (9 October 2024) 843:15–31 (Plaintiff XXN).

Mr White frankly acknowledged early in their first meeting that Ms Gobbo would be informing against very dangerous people, that she was right to be concerned, and that he could not ask her to trust him completely.[178]

(2) In or about September 2005, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith know that Ms Gobbo:

(a) was vulnerable, being concerned about her health, scared for her welfare, and under pressure as a result of her gangland connections;

(b) was being induced by them to assist MDID and Purana investigations;

(c) relied on them to protect her from harm as a result of disclosing confidential information about her clients; and

(d) was at serious risk, including risk of death, if confidential information disclosed by Ms Gobbo to Victoria Police was revealed outside Victoria Police?

312 This question introduces two important aspects of the plaintiffs' case. First, there is an allegation that Ms Gobbo was vulnerable and that her vulnerability was known to the relevant members of Victoria Police. Second, there is an allegation that Ms Gobbo was induced to become an informer, and that the relevant police officers were aware of this. Before considering the evidence in relation to these allegations, it is necessary to consider what was meant by the allegations that Ms Gobbo was 'induced' to become an informer and that she was 'vulnerable' in various ways.

'Induced'

313 The plaintiffs' case on inducement shifted throughout the trial. In opening, they contended that Ms Gobbo had been induced to become an informer by certain assurances, promises, and guarantees given to her by police.[179] They said that police had procured and encouraged her to provide information in exchange for those assurances.[180]

314 The plaintiffs further sought to demonstrate that police had 'groomed' Ms Gobbo to become an informer, through the evidence of medico-legal psychiatrist Dr Susan Brann.[181] Dr Brann had been instructed to assess whether Ms Gobbo was groomed

178 Exhibit P52 transcript, 4–5.
179 Transcript (30 September 2024) 105:3–13 (Taylor address).
180 Transcript (30 September 2024) 33:3–17, 100:17–24 (Taylor address).
181 Exhibit P1: Psychiatric Report of Dr S Brann dated 12 January 2024, [236]–[237].

by members of Victoria Police, on the basis that 'grooming' meant 'the action of attempting to form/forming a relationship with a person with a view to inducing them to commit an illegal act'.[182]

315 In closing, the plaintiffs relied on a more straightforward definition of 'induce' as meaning to 'persuade or influence a person to act'.[183] They ultimately made no submission that Ms Gobbo had been groomed by police to become an informer.

316 The State submitted that 'induce' should be understood as meaning something more than mere encouragement, but less than being forced.[184] Put colloquially, it said that to induce a person is 'to put the hard word on them'.[185]

317 The *Macquarie Dictionary* defines 'induce' relevantly to mean 'to lead or move by persuasion or influence, as to some action, state of mind, etc'.[186] The first meaning of 'induce' given in the Shorter Oxford Dictionary is to similar effect: 'Lead, persuade, influence (a person). Foll. by *to do* something (now *rare*) to an action, condition, etc'.[187]

318 Consistent with those dictionary definitions, I understand the words 'induce' and 'inducement' in the plaintiffs' pleadings to mean to lead, persuade, or influence. I accept the State's submission that the word 'induce' connotes more than mere encouragement and less than coercion, and carries a sense of being prevailed upon.

'Vulnerable'

319 The plaintiffs pleaded that each of Mr Rowe, Mr Mansell, Mr White, and Mr Smith knew that Ms Gobbo was vulnerable, being concerned about her health, scared for her welfare, and under pressure as a result of her gangland connections.[188] The same

182 Exhibit P68: Letter of Instruction to Dr Susan Brann Requesting Report dated 22 November 2023, 6.

183 Nicola Maree Gobbo & Ors, 'The plaintiffs' written closing submissions', Submission in *Gobbo v State of Victoria,* S ECI 2021 03269, 18 November 2024, [14] (**Plaintiffs' closing submissions**), referring to the definition of 'induce' in the *Encyclopaedic Australian Legal Dictionary* (online at 18 November 2024).

184 State of Victoria, 'Defendant's outline of closing submissions', Submission in *Gobbo v State of Victoria,* S ECI 2021 03269, 15 November 2024, [162]–[166] (**Defendant's closing submissions**); Transcript (20 November 2024)1861:5–1863:23 (Quinn address).

185 Transcript (18 November 2024) 1456:13–8 (Quinn address).

186 *Macquarie Dictionary* (online at 17 April 2025) 'induce'.

187 *Shorter Oxford English Dictionary* (6th ed, 2007) 'induce' [1].

188 Fourth amended statement of claim, [10A(a)] (**FASOC**).

plea of vulnerability was made in support of the other two negligence claims.[189]

320 In other words, the plaintiffs claimed that Ms Gobbo had a number of pre-existing vulnerabilities, and that police knew, or ought to have known, of these vulnerabilities when they induced her to become an informer and permitted her to continue informing. This is not to be confused with the sense in which 'vulnerable' is often used in the context of a negligence claim, which is that the plaintiff was vulnerable to harm because of the nature of their relationship with the defendant.

321 It is necessary to determine whether Ms Gobbo was in fact vulnerable in the ways alleged, before considering whether police knew, or ought to have known, of her vulnerabilities.

322 Ms Gobbo had a major health scare in July 2004, when she suffered a stroke. She was in hospital for five days and was unable to work for a number of weeks.[190] Her treatment included heart surgery to repair a hole in her heart. After the stroke, Ms Gobbo had slow speech, left-sided weakness, and memory recall issues, and became tired quickly for months after the stroke.[191] However, she made a good recovery and within a year she was able to return to her practice as a criminal defence barrister, acting for the same general group of clients.

323 Aside from a natural concern that she might have another stroke, by September 2005 Ms Gobbo may also have begun to suffer from facial pain that much later was diagnosed as chronic severe neuropathic facial pain and headache post stroke.[192] Her treating pain specialist reported that these symptoms began in October 2006, but Ms Gobbo recalled that they started about a year after her stroke. Her evidence was that on the day of Mr Bickley's bail application, she was 'in pain' and that this added to her demeanour at court.[193]

189 FASOC, [28A(a)], [37A(a)].
190 Transcript (8 October 2024) 681:10–683:11 (Plaintiff XXN).
191 Transcript (8 October 2024) 681:30–682:5 (Plaintiff XXN).
192 Exhibit P10: Dr S de Graaff treatment report dated 18 September 2019. Dr de Graaff first saw Ms Gobbo in February 2008, for facial pain that developed in October 2006.
193 Transcript (2 October 2024) 320:17–22 (Plaintiff XN).

324 Otherwise, Ms Gobbo did not identify any other specific health concerns that she held in September 2005.

325 I accept that Ms Gobbo felt under pressure as a result of her gangland connections — in particular her close association with Tony Mokbel.

326 Ms Gobbo described a frightening incident in late 2003, when an associate of Carl Williams, Andrew 'Benji' Veniamin, confronted her outside her home. He was unhappy that she had appeared on a bail application for a member of the rival 'Carlton crew'.[194] This was the first time that Ms Gobbo felt physically threatened by a person in her client group. Within a week of the incident, Mr Veniamin had apologised to her, at the insistence of his lawyer. A few months later he was dead.

327 This incident was not part of any ongoing pattern. Ms Gobbo agreed that Tony Mokbel had not physically threatened her before she began informing, and nor had anyone else in the Mokbel or Williams crew.[195] The pressure she felt in 2005 was not the result of physical threats or intimidation.

328 Rather, Ms Gobbo felt under pressure from Mr Mokbel to act as a member of his crew, and not as an independent barrister with ethical responsibilities to her individual clients. She was scared that he would find out that she had acted for a person who had 'rolled' and given evidence to police implicating other gangland figures. She encountered situations where the interests of her individual client conflicted with those of Mr Mokbel, and felt strong pressure from Mr Mokbel to prefer his interests over her client's.[196] The brief to apply for bail for Mr Bickley on 31 August 2005 was one such situation.

329 In addition, by September 2005 Ms Gobbo had become concerned that she might somehow be implicated in Mr Mokbel's ongoing criminal activities. In late 2004, Mr Overland had announced that the Purana Taskforce would start looking at

194 Transcript (8 October 2024) 655:19–31 (Plaintiff XXN).
195 Transcript (8 October 2024) 656:9–24 (Plaintiff XXN).
196 Transcript (8 October 2024) 732:18–733:8 (Plaintiff XXN).

lawyers and accountants who facilitated gangland enterprises. Ms Gobbo had permitted a situation to develop where she often met with several of Mr Mokbel's associates at one time, in a restaurant rather than in chambers, and in circumstances where she did not know and could not control who was present. She was aware that it was likely that some of her conversations with individual clients, or the broader group associated with them, were being intercepted by police.[197]

330 Mr Mokbel himself also contributed to the pressure felt by Ms Gobbo. He telephoned her often, sometimes many times a day. On occasion he screamed and yelled and was aggressive; sometimes he was nice. Ms Gobbo described him in her second interview with Mr White and Mr Smith as 'Jekyll and Hyde'.[198] He also made unreasonable demands, for example that she immediately get someone out on bail, and blamed her for delays that were outside her control. Specifically in relation to Mr Bickley, Ms Gobbo felt that Mr Mokbel was using her to stand over Mr Bickley, to prevent Mr Bickley from talking.[199] Ms Gobbo described Mr Mokbel's telephone contact with her as abuse and harassment, which made her feel shaken, upset, and trapped.[200]

331 More generally, Ms Gobbo was concerned about the stress of her work and the lack of balance in her life. In her first interview with Mr White and Mr Smith, she described herself as burnt out, and unable to deal with the stress any more.[201] I accept that she was concerned for her long-term welfare and her ability to cope with the stress of her work and the pressure of Mr Mokbel's demands.

332 I am unable to find that Ms Gobbo was *scared* for her welfare at that time. She was not being physically threatened and had no immediate fear for her safety. I accept Ms Gobbo had concerns about her safety. She was conscious that she was associating with extremely violent people and was aware of the possibility that, like

197 Exhibit P53 transcript, 163.
198 Exhibit P53 transcript, 29.
199 Transcript (8 October 2024) 664:28–29 (Plaintiff XXN).
200 Transcript (8 October 2024) 666:2–13 (Plaintiff XXN).
201 Exhibit P52 transcript, 62.

some others in their orbit, she might end up being physically harmed. She also feared that by answering Mr Mokbel's demands she would get herself into trouble.[202] I understood 'trouble' in this context to mean legal and professional trouble.

Mr Rowe and Mr Mansell

333 The evidence set out at [259] to [267] above, in particular the admissions noted at [264], supports findings that Mr Rowe and Mr Mansell knew that Ms Gobbo:

(a) was distressed and emotional at court on 31 August 2005;

(b) said that she had been threatened and surveilled by Mr Mokbel;

(c) had concerns arising from her relationship with Mr Mokbel, including health concerns;

(d) felt conflicted in respect of her client Mr Bickley, because Mr Mokbel had told her that he expected Mr Bickley not to cooperate with police, but she believed it was in Mr Bickley's best interests to do so;

(e) wanted to get out of the position she had gotten herself into by becoming a social relation to members of the Melbourne criminal underworld;

(f) was concerned for her welfare; and

(g) was concerned about her safety if she provided information to police.

334 In addition, the State admitted that Mr Rowe and Mr Mansell, from approximately August 2004, were of the view that Ms Gobbo's involvement with members of the Melbourne criminal underworld had exceeded the ordinary professional relationship between a barrister and client, such that she was considered and treated as a social, rather than purely professional, associate.[203] It also admitted that Mr Rowe and Mr Mansell were aware that Ms Gobbo may have been concerned about her own safety as a result of some of those relationships, and being privy to some

202 Transcript (14 October 2024) 1028:2–22 (Plaintiff RXN).
203 Defence, [10A(a)(i)].

information that members of the Melbourne criminal underworld would not ordinarily share with their lawyers.[204]

335 On that basis, I am satisfied that Mr Rowe and Mr Mansell were aware on 31 August 2005 that Ms Gobbo was under pressure as a result of her gangland connections and held general concerns for her health and welfare. To that extent, they knew that she was vulnerable.

336 In response to Ms Gobbo's distress and the concerns she had outlined, Mr Mansell suggested that she 'get on board'.[205] Ms Gobbo agreed to speak further with Mr Rowe and Mr Mansell, and they arranged to meet later that day. At the second discussion, Mr Rowe and Mr Mansell discussed with Ms Gobbo the process of cooperating with police — 'how they might be able to assist me, and that I might be able to assist them' — and told Ms Gobbo that if she did cooperate, she would be managed by officers who were specialists in dealing with human sources.[206] Neither Mr Rowe nor Mr Mansell gave Ms Gobbo any assurances about her safety if she were to become an informer.[207]

337 In my view, these interactions did not amount to inducing Ms Gobbo to become an informer. Mr Mansell made the suggestion that she might 'get on board', she agreed to speak further about it, and then they said that she could cooperate with police through specialist officers.[208] At most, Mr Rowe and Mr Mansell encouraged Ms Gobbo to consider becoming an informer and facilitated her in taking the next step. I am not persuaded that they led, persuaded, or prevailed upon her to become an informer.

338 Neither Mr Rowe nor Mr Mansell were actively involved in subsequent discussions with Ms Gobbo about becoming an informer. While they were present for part of the initial meeting on 16 September 2005, they were passive participants who were

204 Defence, [10A(a)(ii)].
205 Defence, [5(a)(ii)(B)].
206 Transcript (2 October 2024) 322:1–12 (Plaintiff XN).
207 See [303] above.
208 Defence, [5(b)(ii)(F)].

there only to hand over management of Ms Gobbo to the SDU.[209] Ms Gobbo agreed that her contact with Mr Rowe and Mr Mansell effectively ceased once they had introduced her to Mr White and Mr Smith.[210]

339 There is no evidence that either Mr Rowe or Mr Mansell knew or had reason to believe that Ms Gobbo relied on them to protect her from harm as a result of disclosing confidential information about her clients. At that time, they did not know whether she would provide any information to police, let alone confidential information about her clients. Their response to her requests for assurances about her safety was to refer her to the specialist officers at the SDU.

340 I have no difficulty finding that Mr Rowe and Mr Mansell knew, or ought to have known, that Ms Gobbo was at serious risk, including risk of death, if it was revealed outside Victoria Police that Ms Gobbo had disclosed confidential information about her clients to Victoria Police. The risks faced by police informers are notorious, and underpin the public interest in preserving their anonymity.[211] The May 2004 murders of police informer Terence Hodson and his wife Christine Hodson served as a terrible reminder of the reality of those risks.

341 When Mr Rowe and Mr Mansell undertook to introduce Ms Gobbo to specialist officers at the SDU, they knew that Ms Gobbo was interested in assisting police. I accept that they were aware of the serious risks to her safety if she went on to do that.

Mr White and Mr Smith

342 During the meetings on 16 and 21 September 2005, Ms Gobbo was open with Mr White and Mr Smith about her health concerns. She told them about her stroke the previous year, and how she had recovered from it.[212] She described at length the pressure that she felt as a result of her association with Mr Mokbel, including

209 See [304] above.
210 Transcript (7 October 2024) 543:12–26 (Plaintiff XN).
211 *AB v CD (HC)*, [9], [12] (quoted at [6] above).
212 Exhibit P52 transcript, 19.

because of his demanding and erratic behaviour towards her.[213] Ms Gobbo spoke of her awareness of conflicts between Mr Mokbel's interests and those of some other clients, and the difficult position that put her in.[214] She mentioned her fear that people would find out that she had acted for a person who had 'turned on half the underworld'.[215] She also spoke of her fear that she might be implicated in Mr Mokbel's wrongdoing. Ms Gobbo told Mr White and Mr Smith that all of this pressure was 'knocking my health around'.[216]

343 By the end of the second interview on 21 September 2005, Mr White and Mr Smith were well aware of Ms Gobbo's pre-existing vulnerabilities identified at [321] to [332]. While I am not sure that either of them considered her to be vulnerable,[217] they were aware that she was concerned for her health and welfare, and that she was under pressure due to her gangland connections, in particular her association with Mr Mokbel.

344 The evidence of Ms Gobbo's first two meetings with Mr White and Mr Smith does not establish that they induced her to become an informer — in the sense of leading, persuading, or prevailing upon her to take that course. Indeed, the plaintiffs did not make that submission in closing, and did not press their earlier suggestion that police had 'groomed' Ms Gobbo to become an informer.[218]

345 I find that Ms Gobbo chose to attend those meetings to discuss assisting police by providing information, and was being offered a choice whether to proceed. Early in the first interview Mr White made a number of statements such as 'if this relationship develops', 'if you want to go down that track', 'if you want to continue on', and 'if you're comfortable with where you want to go with this'.[219] Ms Gobbo agreed in cross-examination that at that stage it was made absolutely clear to her

213 Exhibit P52 transcript, 19, 69, 71–2.
214 Exhibit P52 transcript, 34–5.
215 Exhibit P52 transcript, 19.
216 Exhibit P52 transcript, 75.
217 See Transcript (16 October 2024) 1283:6–29 (Officer Black).
218 See [314]–[315] above.
219 Exhibit P52 transcript, 12, 15–7.

that she had a choice to make whether or not to engage in an informer relationship.[220]

346 And Ms Gobbo chose to talk. She spoke freely, at length, and with very little prompting about Mr Mokbel and several other clients. She needed no persuasion to disclose a great deal of information during that first meeting.[221]

347 In concluding the first meeting, Mr White remarked that the objective that day had been to test the water, to see where Ms Gobbo could be useful, and most of all to make sure that she was comfortable continuing on. He said 'If you're comfortable to have another meeting next week, we've achieved our objective today'.[222] He observed that there was no reason to hurry it, to which Ms Gobbo responded 'only my health, that's all'.[223]

348 Ms Gobbo was sufficiently comfortable to have a second meeting with Mr White and Mr Smith the following week. I do not discern from the recording and transcript of that meeting that she needed any persuasion to continue providing information about Mr Mokbel. She gave a great deal of information during that meeting, again with minimal prompting.

349 I do not accept the State's submission, based on the exchange set out at [286] above, that Ms Gobbo had decided to become an informer 12 months earlier. Ms Gobbo denied that when it was put to her, and I accept her denial.[224] Read in context, her statement 'I made the decision about 12 months ago' meant that she had decided a year earlier to do something about the fact that she was surrounded by 'some pretty ordinary people'.[225] Becoming an informer was not the only way she could have achieved that outcome.

220 Transcript (8 October 2024) 724:27–725:4 (Plaintiff XXN).
221 See [276]–[284] above.
222 Exhibit P52 transcript, 126.
223 Exhibit P52 transcript, 126.
224 Transcript (9 October 2024) 821:18–823:3 (Plaintiff XXN).
225 Exhibit P52 transcript, 112.

350 There were a range of other things Ms Gobbo could have done to change her situation and relieve the pressure created by Mr Mokbel and her other gangland connections. She could have taken the opportunity presented by her stroke to change the mix of the work she took on, and improve her work-life balance. Instead, she resumed working the same long hours, doing the same work for the same people.[226] She could have consulted the Victorian Bar's Ethics Committee about the conflicts of interest that were causing her distress.[227] She could have sought guidance from her mentor or another senior counsel with whom she had worked or shared chambers.[228] She could have spoken with one of the experienced solicitors who briefed her regularly, or with her sister, who was also a lawyer.[229] She could have confided in any of these people without endangering them or herself, but did not do so.[230] She could have done what she eventually did in 2008, which was to tell the Mokbel family that she would no longer act for them and wished to have no further contact.[231]

351 The existence of these alternatives reinforces my conclusion that Ms Gobbo was not induced to become a police informer. Her chosen way out of the situation in which she felt trapped was to provide information to police that would see Mr Mokbel arrested and gaoled. With the benefit of age, maturity, and hindsight Ms Gobbo now acknowledges that this was 'an idiotic stupid thing to do' and that she should not have done it.[232] It was, nevertheless, the choice she made.

352 I accept that both Mr White and Mr Smith knew, or ought to have known, that Ms Gobbo relied on them to protect her from harm as a result of informing on her clients. She made clear that she feared retribution, they accepted that she was right

226 Transcript (8 October 2024) 682:22–684:7 (Plaintiff XXN).
227 Transcript (8 October 2024) 668:28–669:23, 670:19–22 (Plaintiff XXN).
228 Transcript (8 October 2024) 669:24–670:8, 670:23–8, 760:30-761:23 (Plaintiff XXN). I reject the plaintiffs' submission that the Statement of Con Heliotis to the Royal Commission into the Management of Police Informants (Exhibit P78) was evidence that Ms Gobbo could not have confided in him before she became a police informer. In any event, Mr Heliotis was only one of several senior barristers who Ms Gobbo could have turned to for advice.
229 Transcript (8 October 2024) 670:9–18, 670:29–671:18 (Plaintiff XXN).
230 Transcript (8 October 2024) 671:19–30 (Plaintiff XXN).
231 Transcript (10 October 2024) 944:2–946:4 (Plaintiff XXN).
232 Transcript (7 October 2024) 594:14–27 (Plaintiff XXN).

to be concerned, and in response gave the limited and qualified assurances discussed at [305] to [311] above.

353 I also accept that Mr White and Mr Smith were well aware that Ms Gobbo was at serious risk, including risk of death, if information about her clients disclosed by her to Victoria Police was revealed outside Victoria Police — including confidential information. The risk was obvious, it was discussed during the two initial meetings, and it was conceded by the State.[233]

(3) In or about September 2005, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith know, or ought they have known, that:

(a) they could not protect Ms Gobbo from being exposed as an informer; and

(b) in that event, there was a risk of her suffering harm?

Mr Rowe and Mr Mansell

354 This question does not really arise in relation to Mr Rowe and Mr Mansell, because I have found that they gave no assurances to Ms Gobbo about her safety, should she become an informer. In general terms, I am prepared to accept that they both understood that, if Ms Gobbo became an informer, she might later be exposed and would then be at risk of harm. However, neither of them assumed responsibility to protect her from that risk, beyond referring her to the specialist SDU.

Mr White and Mr Smith

355 Mr White frankly acknowledged at the outset that there was a risk of things going wrong and that the person Ms Gobbo wanted to talk about had the capacity to hurt people. He said that they took the risk seriously, and explained some of the things they would be doing to guard against it.

356 In addition, Mr White was clearly aware that police records in relation to informers could be subpoenaed, and that there were arguments that could overcome a claim of privilege or public interest immunity.

357 All of this was articulated during the first meeting between Ms Gobbo, Mr White, and Mr Smith. I am satisfied that each of Mr White and Mr Smith knew that, as

[233] Defendant's closing submissions, [112]–[114].

individual police officers, they could not protect Ms Gobbo from being exposed as a result of events beyond their control. The risk of information leaking from within Victoria Police was ever-present, as demonstrated by the then still recent murders of the Hodsons. The potential for identifying information to be obtained through compulsory disclosure was also present. The serious, possibly fatal consequences of exposure were self-evident.

(4) In light of the answers to questions 1 to 3, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith owe Ms Gobbo a duty to take reasonable care to avoid her suffering injury in connection with being induced to provide information to Victoria Police?

358 The short answer to this question is that Ms Gobbo was not induced to provide information to Victoria Police, and so the premise of the alleged duty of care did not exist.

359 Allowing for some awkwardness in the way the alleged duty was pleaded, I will consider whether any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith had a duty to take reasonable care to avoid her suffering injury in connection with being recruited as a police informer.

Duty of care — principles

Plaintiffs' submissions

360 The plaintiffs submitted that the duty of care alleged to be owed by Mr Rowe, Mr Mansell, Mr White, and Mr Smith was not novel, but fell within a recognised category of the duty of care owed by police to informers.[234] They also referred to the rejection of the summary dismissal application in ***Smith*** *v State of Victoria*,[235] in which John Dixon J held:[236]

> Australian common law has not affirmatively recognised that a police officer can never owe a duty of care. Whether a police officer does owe a duty of care in the terms identified in the amended statement of claim must necessarily be determined on a close analysis of the facts bearing on the

[234] Referring to authorities including *Swinney v Chief Constable of the Northumbria Police Force* [1997] QB 464; *Van Colle v Chief Constable of the Hertfordshire Police* [2009] 1 AC 225; *An Informer v A Chief Constable* [2013] QB 579; *Robinson v Chief Constable of West Yorkshire Police* [2018] AC 736.

[235] (2018) 56 VR 332 (***Smith***).

[236] *Smith*, [170].

> relationship between the plaintiffs and the putative tortfeasor for whom the defendant is responsible. I accept that there are many cases in which it has been held that police and the police force as a whole do not owe a duty of care to a plaintiff in the particular circumstances of those cases. In no case has a court determined that no duty of care was owed in circumstances that demonstrate the degree of proximity between the plaintiffs and the police that is likely to be demonstrated on the evidence in this case at trial and in the legislative and policy framework that prevail in respect of domestic violence at the relevant time.

361 In addition, the plaintiffs relied on numerous references to 'duty of care' in Victoria Police policies and procedures. For example, CCI 03/05 included a statement that 'duty of care for both police members and informers has been given absolute priority'.[237] They pointed out that both Mr Overland and Mr Black had accepted that Victoria Police owed Ms Gobbo a duty of care.

362 In the alternative, the plaintiffs submitted that the alleged duty of care was consistent with a 'salient features' analysis of the facts and law.[238] They submitted that this case was similar to *Annetts v Australian Stations Pty Ltd*,[239] in which the defendant had assured the plaintiffs that their son would be supervised and cared for, and therefore owed them a duty to do so.

State's submissions

363 The State did not dispute that a duty of care *could* be owed by a police officer, but said that the authorities relied on by the plaintiffs did not support the duty of care pleaded. It made detailed submissions distinguishing each of those authorities from this case, and said that none was a case in which a duty of care was found to be owed by a police officer to a potential informer.

364 The State pointed out a conceptual difficulty with the notion that police officers owe a duty to a general class of potential informers, not to expose them to risk by persuading them to become informers. It said that this would be inconsistent with the duty of police to encourage people to provide useful information in relation to the investigation of crimes.[240] It argued that it would be nonsensical for police

237 Exhibit P111, 1.
238 Referring to *Caltex Refineries (Qld) Pty Ltd v Stavar* (2009) 75 NSWLR 649, [103] (Allsop P) (***Stavar***).
239 (2002) 211 CLR 317, [144] (McHugh J).
240 Referring to Exhibit P61.

officers to also have a duty to avoid exposing potential informers to the inherent risks of informing.

365 As a result, the State submitted, a novel duty of care was alleged. It said that determining whether such a duty was owed to Ms Gobbo would require a 'salient features' analysis, applying the principles set out in *Caltex Refineries (Qld) Pty Ltd v* ***Stavar***[241] to the particular facts of this case.

366 The State drew attention to the plaintiffs' confirmation in opening that the salient features relied upon are those alleged at [10A] of the fourth amended statement of claim.[242] It distilled the basis for the pleaded duty of care to be actual or constructive knowledge on the part of the police officers that:[243]

(a) Ms Gobbo was *vulnerable* because of her gangland connections;

(b) Ms Gobbo was *induced* by the frontline officers to assist police;

(c) Ms Gobbo *relied* on members of Victoria Police to *protect her* from harm from *revealing confidential information* about *her clients;* and

(d) if *confidential information* she did impart was in turn *revealed outside Victoria Police* it would put her at *serious risk*, including of *death*.

367 Against those features, the State submitted that the pleaded duty of care conflicted with other considerations identified in *Stavar*, namely:[244]

(a) 'the existence of conflicting duties arising from other principles of law or statute'; and

(b) 'the desirability of, and in some circumstances, need for conformance and coherence in the structure and fabric of the common law'.

Consideration

241 *Stavar*, [102]–[103] (Allsop P).
242 Transcript 236:22–237:6 (Hamilton address).
243 Defendant's closing submissions, [133].
244 Defendant's closing submissions, [182], referring to *Stavar*, [103(o), (q)] (Allsop P).

368 I accept the State's submission that the duty of care pleaded in relation to Ms Gobbo's negligent inducement claim is a novel duty. None of the authorities relied on by the plaintiffs establish that there is a recognised duty owed by a police officer to a potential informer, to take reasonable care to avoid that person suffering injury in connection with being induced (or recruited) to become an informer.

369 Those authorities involved entirely different facts from the facts of this case, and none of them resembled the relationship alleged to have given rise to a duty of care here. Briefly:

(a) In *Swinney v Chief Constable of the Northumbria Police,*[245] the plaintiff had provided information to police which then came into the hands of the offender, who then threatened the plaintiff with violence and arson. The Court of Appeal of England and Wales held that it was arguable that a special relationship arose between the plaintiffs and the police through the assumption by the police of responsibility to preserve the confidentiality of information provided by one of the plaintiffs. An important consideration was the public interest in protecting the confidentiality of informants and encourage them to come forward without fear of disclosure. A judge of the Queens Bench Division subsequently found that the police owed the plaintiff a duty 'to take reasonable care to avoid unnecessary disclosure to the general public' of the information she had given police.[246]

(b) *Van Colle v Chief Constable of the Hertfordshire Police*[247] involved two cases. The first was a claim by a witness for the prosecution, whose son had been shot dead shortly before the witness was due to give evidence at trial, alleging a breach by police of art 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[248] The second was a claim that police had failed to protect the plaintiff from being attacked and injured by

245 [1997] QB 464.
246 *Swinney v Chief Constable of Northumbria Police* (QB, Jackson J, 21 April 1999).
247 [2009] 1 AC 225.
248 *Human Rights Act 1998* (UK) sch 1.

his former partner. The House of Lords held in the first case that art 2 had not been violated, and in the second that police did not owe a duty of care to the plaintiff.

(c) In *An Informer v A Chief Constable*,[249] the Court of Appeal of England and Wales held that the relationship between the claimant and the police was such that the chief constable had assumed a duty of care to protect the claimant from risks to his physical safety and wellbeing as a result of his activities as a covert human intelligence source.

(d) *Michael v Chief Constable of South Wales Police*[250] was a negligence claim by the family of a woman who had made an emergency call reporting that her former partner had threatened to return and kill her. He did return and stabbed her to death before police responded to the call. The Supreme Court of the United Kingdom dismissed the claimants' appeal for reasons including that police did not owe the victim a duty of care to prevent domestic violence.

(e) In *Robinson v Chief Constable of West Yorkshire Police*,[251] the Supreme Court of the United Kingdom held that police officers owed a duty of care to pedestrians, including the claimant, in the immediate vicinity of where they were attempting to arrest a suspected drug dealer.

(f) *Smith* was a claim by a woman and her children, alleging that police owed three specific duties of care: first, to affected family members to prevent breach of extant intervention orders; second, to women and children to prevent family violence by repeat offenders; and third, owed by senior police officers to ensure compliance by police within their line of command with Victorian family violence policies. The State's summary dismissal application failed, on the basis that the issue could only be determined once the facts had

249 [2013] QB 579.
250 [2015] AC 1732.
251 [2018] AC 736.

been established at trial.[252]

370 In *Stavar*, Allsop P set out a non-exhaustive list of matters that may be relevant to the existence of a novel duty of care:[253]

> These salient features include:
>
> (a) the foreseeability of harm;
>
> (b) the nature of the harm alleged;
>
> (c) the degree and nature of control able to be exercised by the defendant to avoid harm;
>
> (d) the degree of vulnerability of the plaintiff to harm from the defendant's conduct, including the capacity and reasonable expectation of a plaintiff to take steps to protect itself;
>
> (e) the degree of reliance by the plaintiff upon the defendant;
>
> (f) any assumption of responsibility by the defendant;
>
> (g) the proximity or nearness in a physical, temporal or relational sense of the plaintiff to the defendant;
>
> (h) the existence or otherwise of a category of relationship between the defendant and the plaintiff or a person closely connected with the plaintiff;
>
> (i) the nature of the activity undertaken by the defendant;
>
> (j) the nature or the degree of the hazard or danger liable to be caused by the defendant's conduct or the activity or substance controlled by the defendant;
>
> (k) knowledge (either actual or constructive) by the defendant that the conduct will cause harm to the plaintiff;
>
> (l) any potential indeterminacy of liability;
>
> (m) the nature and consequences of any action that can be taken to avoid the harm to the plaintiff;
>
> (n) the extent of imposition on the autonomy or freedom of individuals, including the right to pursue one's own interests;
>
> (o) the existence of conflicting duties arising from other principles of law or statute;
>
> (p) consistency with the terms, scope and purpose of any statute relevant to the existence of a duty; and

252 *Smith*, [171].
253 *Stavar*, [103] (Allsop P).

(q) the desirability of, and in some circumstances, need for conformance and coherence in the structure and fabric of the common law.

371 It is not necessary to consider all of these features in every case. A plaintiff who alleges a novel duty of care must plead the facts and circumstances relied upon as giving rise to a legal duty to take reasonable care to avoid harm or injury.

372 At most, these authorities support a conclusion that it is possible for a police officer to owe a duty to a potential informer, depending on the facts and circumstances of the particular case. So much was conceded by the State.

373 The salient features of the relationship between Ms Gobbo and the four recruiting police officers were pleaded in the fourth amended statement of claim at [10A] and [12]. Those paragraphs read:

> 10A. In the premises of paragraphs 3 to 9, and in circumstances where each of … Rowe, Mansell, White and Smith:
>
> (a) knew that the First Plaintiff was vulnerable, being concerned about her health, scared for her welfare and/or under pressure as a result of her gangland connections;
>
> (b) was being induced to assist the MDID and the Taskforce's investigations by … Rowe, Mansell, White and Smith;
>
> (c) relied on … Rowe, Mansell, White and Smith to protect her from harm from revealing confidential information relating to the First Plaintiff's clients;
>
> (d) knew that if what confidential information the First Plaintiff revealed about her clients was revealed to those outside Victoria police it would put the First Plaintiff at serious risk, including the risk of death, each of … Rowe, Mansell, White and Smith owed the First Plaintiff a duty to take reasonable care to avoid the First Plaintiff suffering foreseeable injury in connection with inducing the First Plaintiff to provide information to each of them, and other members of Victoria police.
>
> 12. A reasonable person in the position of each of … Rowe, Mansell, White and Smith knew or ought to have known that, by inducing the First Plaintiff to assist the Taskforce's investigations as an informer in circumstances where … Rowe, Mansell, White and Smith knew or ought to have known that they could not protect the First Plaintiff from being exposed as an informer, there was a risk of the First Plaintiff suffering harm within the meaning of section 48(1)(a) of the *Wrongs Act 1958* (Vic).
>
> **PARTICULARS**
>
> The First Plaintiff was asked to give confidential information relating to her clients, many of whom were alleged to have committed serious

> indictable and other offences and allegedly involved in gangland murders and other criminal activity. … Rowe, Mansell, White and Smith knew or ought to have known that, should the First Plaintiff's identity be made public, that put her at a real risk of suffering harm by them and others.

374 In opening, the plaintiffs confirmed that these were the salient features they relied on to establish the pleaded duty of care.[254]

Mr Rowe and Mr Mansell

375 The relevant findings of fact in relation to Mr Rowe and Mr Mansell are:

(a) They were aware on 31 August 2005 that Ms Gobbo was under pressure as a result of her gangland connections and held general concerns for her health and welfare. To that extent, they knew that she was vulnerable.

(b) Their interactions with Ms Gobbo did not amount to inducing her to become an informer. At most, they encouraged Ms Gobbo to consider becoming an informer and facilitated her in taking the next step, by introducing her to the SDU. Their involvement ended there.

(c) Neither Mr Rowe nor Mr Mansell knew or had reason to believe that Ms Gobbo relied on them to protect her from harm as a result of disclosing confidential information about her clients. Their response to her requests for assurances about her safety was to refer her to the specialist officers at the SDU.

(d) They both understood that, if Ms Gobbo became an informer, she might later be exposed and would then be at risk of harm. However, neither of them assumed responsibility to protect her from that risk, beyond referring her to the specialist SDU.

376 I do not consider that these matters gave rise to a legal duty owed by either Mr Rowe or Mr Mansell to take reasonable care to avoid foreseeable risks of harm to Ms

[254] Transcript (1 October 2024) 232:4–30, 236:22–237:5 (Hamilton address). Cf Plaintiffs' closing submissions, [45].

Gobbo in connection with being recruited as a police informer. She was already under pressure when she arrived at the Magistrates' Court on 31 August 2005, hence her interest in assisting police. Mr Rowe and Mr Mansell gave Ms Gobbo no assurances and assumed no responsibility for her safety after introducing her to Mr White and Mr Smith. Beyond that point, they had no influence over whether Ms Gobbo would become an informer and no knowledge of the information she would go on to provide.

Mr White and Mr Smith

377 The relevant findings of fact in relation to Mr White and Mr Smith are:

(a) By the end of the second interview on 21 September 2005, Mr White and Mr Smith were well aware of Ms Gobbo's pre-existing vulnerabilities identified at [321] to [332]. In summary, they were aware that she was concerned for her health and welfare, and that she was under pressure due to her gangland connections, in particular her association with Mr Mokbel.

(b) They did not induce Ms Gobbo to become an informer. They offered her a choice whether to proceed with providing information to assist police, and she did so. Ms Gobbo freely provided a great deal of information about Mr Mokbel and others during the first meeting, and continued to do so at the next meeting — and subsequently.

(c) Both Mr White and Mr Smith knew, or ought to have known, that Ms Gobbo relied on them to protect her from harm as a result of informing on her clients. She made clear that she feared retribution, they accepted that she was right to be concerned, and in response gave the limited and qualified assurances discussed at [305] to [311] above.

(d) They knew that as individual police officers they could not protect Ms Gobbo from being exposed as a result of events beyond their control. They were aware of the risk of information leaking from within Victoria Police, and the

potential for identifying information to be obtained through compulsory disclosure. The serious, possibly fatal consequences of exposure were self-evident.

378 Mr White and Mr Smith were in a very different position from Mr Rowe and Mr Mansell. They were the specialist officers who had been entrusted with the task of assessing Ms Gobbo's suitability to become an informer. She spoke openly to them about her personal and professional situation, and told them that she saw assisting police as a way to relieve the pressure of that situation. While they did not prevail upon her to start informing on Mr Mokbel and other clients, they understood that doing so would put her at peril. As Mr White put it during the first meeting, if she started down the track of informing it could 'end in tears'.[255] They understood that there was a risk of exposure, no matter how much care they personally took to keep her involvement secret. Once they assessed her as suitable and requested that she be registered as an informer, her safety would be beyond their power to control.

379 In those circumstances, Mr White and Mr Smith had a duty to take reasonable care to avoid Ms Gobbo suffering injury in connection with being recruited as a police informer. In particular, they had a duty to take reasonable care in making their initial assessment and deciding whether to proceed with her registration as an informer.

380 At the same time, it was Victoria Police policy to utilise informers for the purposes of crime investigations, with the known risks to be managed in accordance with CCI 07/03. Both Mr White and Mr Smith were police officers who were duty bound to investigate crime and apprehend offenders. Their duties as police officers did not necessarily conflict with a duty of care to Ms Gobbo, but are relevant in assessing what a reasonable person in their position would have done.

Breach

(5) Would a reasonable person in the position of Mr Rowe, Mr Mansell, Mr White, or Mr Smith not have induced Ms Gobbo to become an informer?

255 Exhibit P52 transcript, 17.

381 Again, there is a short answer to this question — Ms Gobbo was not induced to become an informer. Consistent with my approach to duty of care, I will consider whether a reasonable person in the position of Mr Rowe, Mr Mansell, Mr White, or Mr Smith would not have recruited Ms Gobbo as a police informer.

382 Reasonableness is to be assessed as at September 2005, without the benefit of hindsight or knowledge of the many things that went wrong after Ms Gobbo became an informer. In addition, the focus is on whether the individual police officers acted reasonably. That must be assessed by reference to the policies and procedures of Victoria Police at the relevant time — in particular CCI 07/03.

Mr Rowe and Mr Mansell

383 Although I have found that Mr Rowe and Mr Mansell did not owe a duty of care to Ms Gobbo, it is the case that they were instrumental in her recruitment as an informer. They encouraged her to 'get on board', and facilitated her interest in assisting police by introducing her to the SDU.

384 In my view these were reasonable actions for MDID detectives to take. They were consistent with the policy of Victoria Police to use informers to investigate crime. The relevant policy in September 2005 was CCI 07/03.[256] It contained no guidance for investigators about the particular risks of recruiting a lawyer as an informer, and certainly did not say it should never occur.

385 The plaintiffs relied on opinion evidence from Dr Clive Harfield, whose expertise and opinions I will discuss shortly. In relation to Mr Rowe and Mr Mansell, Dr Harfield's opinion was that if they were not sufficiently experienced in informer management, 'a sensible course of action would have been for them to refer the matter to a suitably experienced officer'.[257] That is exactly what they did.

Mr White and Mr Smith

386 The plaintiffs relied on the opinion of Dr Harfield to support their argument that it was not reasonable to induce — or recruit — Ms Gobbo as a police informer.

256 CCI 07/03 was reissued without change on 20 September 2005 as CCI 03/05: see [235] above.
257 **Exhibit P4**: Report of Dr C Harfield dated 30 May 2024, [38].

387 Dr Harfield is an associate professor of criminology and criminal justice at the Thomas More Law School of the Australian Catholic University, where he has worked since December 2021. He held previous academic positions in the School of Science, Technology and Engineering at the University of the Sunshine Coast, the School of Law at the University of Wollongong, and the T C Beirne School of Law at the University of Queensland.

388 Dr Harfield has the following academic qualifications:

(a) a Master of Science degree with Distinction in Criminal Justice Studies (University of Portsmouth, England);

(b) a Master of Laws degree with Distinction in International Criminal Law (University of Sussex, England);

(c) a Master of Arts degree with Honours in Professional and Applied Ethics (the Australian National University); and

(d) a Doctorate of Philosophy in Politics and International Relations (University of Southampton, England), the topic of his thesis being a study of the practical implications of policy and procedure in the management of transnational criminal investigations.

389 Between January 1987 and September 2009, Dr Harfield served as a police officer in various police organisations in England. For about 16 months in 2003 and 2004, at the rank of Detective Inspector, he undertook the duties of 'controller' of a dedicated source unit, having successfully completed a nationally-accredited training course for that role. He was trained in the management of undercover operations. He currently sits as an independent member on three police ethics bodies in the United Kingdom.

390 Dr Harfield has also authored a number of publications in the areas of covert investigation and police ethics.

391 Dr Harfield provided three reports at the request of the plaintiffs' solicitors, dated 30 May 2024,[258] 28 August 2024,[259] and 12 October 2024.[260] Two notes of conferences with Dr Harfield on 26 August 2024 and 25 September 2024 were also in evidence.[261]

392 Dr Harfield was asked whether, as at September 2005, Mr White and Mr Smith should have assisted in having Ms Gobbo become a registered police informer. His opinion was:[262]

> On the basis of my practitioner experience, specialist role training, and understanding of what constitutes good practice in informer management, and for reasons already outlined above (paragraphs 17 and 18) and because of professional obligation and conflict of interest objections, in my opinion it was inappropriate for any member of Victoria Police to recruit the First Plaintiff as an informer for the purposes to which Victoria Police apparently intended to use the First Plaintiff. It was equally inappropriate for the First Plaintiff to volunteer or acquiesce to be a registered police informer.

393 Paragraphs 17 and 18 of Dr Harfield's first report responded to a question about Mr Overland. His answer set out some general considerations against recruiting a criminal barrister as an informer:[263]

> On the basis of my practitioner experience, specialist role training, and understanding of what constitutes good practice in informer management, I consider it reasonable to suppose that an officer of Mr OVERLAND's education, training, and experience would have:
>
> a) questioned and counselled against the recruitment of a practising barrister on the basis of the likely conflict of interest and breach of professional obligations on the part of the barrister;
>
> b) questioned and counselled against the recruitment of a practising barrister on the basis that any such conflict of interest and breach of professional obligation would compromise any police investigation and/or prosecution as sensitive and privileged information provided in breach of professional obligations could, and would likely, be ruled inadmissible as evidence, or, if adduced and its true nature subsequently identified, would result in a miscarriage of justice because of consequential perceived or actual unfairness in trial procedure;

258 Exhibit P4.

259 Exhibit P5: Supplementary report of Dr C Harfield dated 28 August 2024.

260 Exhibit P7: Further supplementary report of Dr C Harfield dated 12 October 2024.

261 Exhibit P6: Conference note of Dr C Harfield dated 26 August 2024; Exhibit P8: Conference note of Dr C Harfield dated 25 September 2024.

262 Exhibit P4, [43].

263 Exhibit P4, [17]–[18].

c) questioned and counselled against the recruitment of a practising barrister on the basis that informers are vulnerable - in the event of compromise - to becoming victims of (potentially violent) retribution at the hands of those against who they inform, and that in the case of a barrister betraying the interests of allegedly serious and violent criminals to whom the barrister was otherwise providing legal advice, such adverse consequences could reasonably be anticipated to be of the most severe kind, the combination of vulnerability, threat, and likely harm constituting a very serious risk to the life and well-being of the barrister.

In my opinion, the breach of professional obligations, the likelihood of evidence being inadmissible or its being adduced constituting a miscarriage of justice (any miscarriage of justice being contrary to the public interest in the objective and impartial proper operation of the criminal justice system), and the threat to the life and well-being of the barrister, both individually and in conjunction, constitute significant reasons not to recruit and register the barrister as an informer.

394 In cross-examination, Dr Harfield said that his work as a controller had been regulated by the *Regulation of Investigatory Powers Act 2000* (England & Wales) (**RIP Act**), which was supplemented by a code of practice.[264] He acknowledged that neither the RIP Act nor the code of practice prohibited recruiting, registering, or retaining an informer who was a legal practitioner.[265]

395 Dr Harfield agreed that in his work as a controller he had never come across a situation where a lawyer presented themselves to police as a potential informer, and had not seen police having to work out whether to recruit the lawyer as an informer.[266] In the absence of a legal prohibition, he agreed that the decision whether to register the lawyer as an informer would have been a judgment call on the basis of a risk assessment.[267] He said that there were competing moral considerations and risks, and that it was not a straightforward conclusion that a barrister should not have been recruited as a source.[268]

396 Taken to the risk assessment matrix in CCI 07/03, Dr Harfield agreed that it was appropriate for consideration of high risk informers at the time — that is, between

264 Transcript (15 October 2024) 1133:2–5 (Harfield XXN).
265 Transcript (15 October 2024) 1135:16–1136:10 (Harfield XXN).
266 Transcript (15 October 2024) 1140:28–1141:16 (Harfield XXN).
267 Transcript (15 October 2024) 1140:26–1141:24 (Harfield XXN).
268 Transcript (15 October 2024) 1142:15–1144:2 (Harfield XXN).

2003 and 2005 — but did not direct attention to the risks associated with a lawyer who may provide privileged or confidential information.[269] He said that it would be reasonable for an operative to follow the guidelines in the policy and not necessarily go beyond it.

397 The State submitted that Dr Harfield's evidence was of limited assistance, due to his limited practical experience as a controller (and none as a handler) and cultural and legal differences between the policing environment in England and Victoria at relevant times.

398 In relation to this issue, ultimately Dr Harfield's evidence was that it was reasonable for officers in the position of Mr White and Mr Smith to make a risk-based assessment of whether Ms Gobbo should be recruited as an informer, by reference to the risk matrix in the applicable policy. Despite all of the risks involved in recruiting a lawyer as a human source, there was no absolute prohibition on doing so. There were a range of competing considerations, with no straightforward conclusion that a barrister should never be used as a human source.

399 Informed by Dr Harfield's opinion, I am not satisfied that a reasonable person in the position of Mr White and Mr Smith would not have recruited Ms Gobbo as a police informer. It was the policy of Victoria Police to utilise informers to investigate crime, in accordance with the established procedures set out in CCI 03/05. Mr White and Mr Smith were part of the newly formed SDU, with responsibility for managing high risk informers. By the end of their first meeting with Ms Gobbo, it was clear that she was able to provide a great deal of useful information about Mr Mokbel and his associates. In addition, Ms Gobbo was a willing recruit who was seeking police assistance to relieve the pressure she was experiencing from Mr Mokbel and her broader client group.

400 The plaintiffs submitted that it should have been apparent to both Mr White and

[269] Transcript (15 October 2024) 1149:14–1151:11 (Harfield XXN).
Transcript (15 October 2024) 1152:30–1153:1 (Harfield XXN).

Mr Smith that Ms Gobbo would be providing privileged and confidential information about her clients. While it is the case that she volunteered information of that kind during the very first meeting, Mr White and Mr Smith could not reasonably have foreseen the torrent of confidential information that would follow over the next three years, or the extent to which Ms Gobbo would disregard her professional and ethical obligations. In September 2005, the Victoria Police policy for the management of informers simply did not address risks of this kind. In hindsight, this was a serious organisational failure. However, reasonable police officers in the position of Mr White and Mr Smith at that time would have followed the existing policy, which involved making an initial assessment and completing the required registration application form.[270] Reasonable care for Ms Gobbo's safety did not require them to reject her as a potential informer.

(6) Did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith induce Ms Gobbo to become an informer?

401 None of Mr Rowe, Mr Mansell, Mr White, or Mr Smith induced Ms Gobbo to become an informer.

402 Mr Rowe and Mr Mansell encouraged her to 'get on board', and facilitated her interest in assisting police by introducing her to the SDU. This was a reasonable course to take.

403 Mr White and Mr Smith conducted an initial assessment of Ms Gobbo's suitability as a human source. The forms completed on 16 September 2005 indicate that they assessed her to be viable, high risk, and high value, and recommended registration and management by the SDU.[271] This also was a reasonable course to take.

(7) In light of the answers to questions 5 to 6, did any of Mr Rowe, Mr Mansell, Mr White, or Mr Smith breach their duty of care to Ms Gobbo?

270 As provided at Exhibit P61, [23]; see [216] above.
271 See [290] above.

404 There was no negligence on the part of Mr Rowe or Mr Mansell. They did not owe Ms Gobbo a duty of care, and they did not induce her to become an informer. They acted reasonably in referring her to the specialist officers at the SDU.

405 Mr White and Mr Smith did not breach their duty of care to Ms Gobbo. Their actions were in accordance with Victoria Police policy and were reasonable in the circumstances.

Initial negligent permitting claim

406 Ms Gobbo's second claim is that six superior officers were negligent in permitting or failing to stop her engagement as a police informer. To reiterate, those officers were:

(a) Mr O'Brien, the officer in charge of Purana;

(b) Mr Hill, a detective inspector at MDID and in charge of Mr Rowe and Mr Mansell;

(c) Mr Thomas, the Central Informer Registrar;

(d) Mr Purton, a commander in the Crime Department with oversight of both MDID and Purana;

(e) Mr Whitmore, a superintendent in the Crime Department with oversight of Purana; and

(f) Mr Overland, the Assistant Commissioner Crime.

407 Only Mr Overland gave evidence at trial. There is limited evidence of the involvement of the other five officers, in the form of admissions in the State's defence and some documents that were tendered by consent. The following chronology is based on that evidence.

408 On or about 31 August 2005, Mr Rowe and Mr Mansell reported to Mr O'Brien about their conversations with Ms Gobbo that day.[272]

[272] Defence, [22].

409 On 8 September 2005, there was a meeting between Mr Hill, Mr White, Mr Rowe, Mr Mansell, and another officer in which there was a discussion about assessing Ms Gobbo as a human source.[273] The note in the source management log for Ms Gobbo was:[274]

> Meet with HILL, WHITE, MANSELL and ROWE. Briefing re HS and Op QUILLS. HS concerned she is under surveillance and may be killed. DSU to meet with same for assessment. Concern that HS is well known to numerous police members and may have spoken to same re approach to MDID.

410 On 12 September 2005, there was a Purana meeting at which Mr Overland was present, where there was a discussion about a plan for Ms Gobbo to speak to the SDU.[275]

411 On 16 September 2005, Ms Gobbo was approved by Victoria Police as an informer.[276] Mr Thomas was named as the 'LIR' — Local Informer Registrar — on the Informer Registration/Reactivation Application, although the document in evidence did not bear an authorising signature.[277]

412 On 19 September 2005, there was a meeting between Mr Hill, Mr O'Brien, and Mr Mansell.[278] The entry in the source management log recorded:

> … Discussed tactical options and info security. Agreed MDID members to be told HS assessed by DSU as no value. Members who have knowledge of HS intended approach include: FLYNN (& team), MANSELL (& team), CHEESMAN (& team), BATESON (PURANA) and [redacted].

413 Later that day, Mr White, Mr Smith, Mr Hill, and Mr Mansell met. Mr Mansell's diary recorded only that the meeting was 'Re: Op Quills'.[279]

414 Also on or about 19 September 2005, Mr Purton was informed by Mr Hill that Ms Gobbo was a Victoria Police informer.[280]

273 Defence, [23].
274 Exhibit D7, 1.
275 Defence, [24].
276 Defence, [25].
277 Exhibit P49.
278 Exhibit P76, entry for 19 September 2005.
279 Exhibit P76, entry for 19 September 2005.
280 FASOC, [26]; Defence, [26].

415 On or about 26 September 2005, a Purana meeting was held where Mr O'Brien, Mr Overland, Mr Purton, and Mr Whitmore discussed matters relating to Ms Gobbo being a registered informer. Mr Overland's diary for 26 September 2005 recorded a 'Purana update' with the following matters noted:[281]

> Williams trial underway. Marshall murder. Security on prison transport.
>
> …
>
> Mokbel.
> 3838. M met with [Bickley].
>
> Lanteri currently cooking for M.
>
> Operation Quills
>
> … Vic Pol operation.
>
> …
>
> Need to manage this source very carefully — TP to be fully involved.

416 Mr Overland confirmed in his evidence that 'TP' was a reference to Mr Purton.[282]

417 Ms Gobbo's third meeting with Mr White and Mr Smith took place on 26 September 2005.[283]

418 Mr Overland's diary entry for 27 September 2005 noted:[284]

> …
>
> Terry Purton — re debrief 3838
>
> …
>
> Discussed handling of info from 3838 — highly sensitive. IR as normal. Contact reports held by TP.
>
> Discuss with Ian Thomas re management. Need to keep info extremely tight and with audit trails.
>
> Investigate strategy being developed. Monday. Det of Purana.

FASOC, [27]; Defence, [27].

281 **Exhibit P112**: Diaries of Simon Overland (extracts), entry for 26 September 2005.

282 Transcript (21 October 2024) 1622:5–1623:30 (Overland XXN).

283 Exhibit P109: Transcript of tape-recorded conversation between Officer Peter Smith, Sandy White and Nicola Gobbo.

284 Exhibit P112, entry for 27 September 2005; Transcript (21 October 2024) 1627:5–1628:29 (Overland XXN).

> Must not compromise 3838 under any circumstances particularly with proposal to corrupt police officer. Need to ensure 3838 not burned in any plan.

419 On or about 27 September 2005, Mr O'Brien, Mr Rowe, Mr Purton, and others discussed matters relating to Ms Gobbo being a registered informer.[285] The notes for the 27 September 2005 in the source management log were:[286]

> Meeting with A/Com THOMAS. Discussed security measures for HS intel. Agreed higher level of protection required and all documents to be delivered to Dep Registrar Mc. LEAN who will record same in partitioned IMU database.
>
> Briefed Com PURTON, DDI HILL, D/S/SGT O'BRIEN, D/S/C ROWE & BURROWS. Determined that task force will be formed. Agreed MOKBEL offer bribe, money laundering and [Cooper] to be pursued.

420 On 30 September 2005, the following was noted in the source management log:[287]

> Meeting b/w Com. PURTON, A/Supt. HILL, DDI HARDIE, D/S/Sgt O'BRIEN, D/A/S/Sgt FLYNN, S/D's ROWE and BURROWS. Discussion re set up of task force. Update FLYNN.

421 The source management log contained the following entry for 21 October 2005:[288]

> Meeting with D/S/Sgt O'BRIEN, MDID. Received copy investigation plan and risk assessment for Operation POSSE. Task force plan to be submitted today date to A/C crime.

422 The approval of the investigation plan was recorded in the source management log for 24 October 2005:[289]

> Meeting with D/S/Sgt O'BRIEN, MDID. Advised invest. Plan approved. Task force to commence within next two weeks. Request from O'BRIEN not to disseminate I/R's until taskforce started and secure intel directory setup. Also advised that Tony MOKBEL to be arrested by AFP.

423 The first monthly source review for Ms Gobbo was recorded in the source management log on 30 October 2005:[290]

> Source remains High risk, ongoing complete debriefing required. Task Force Op Posse to commence in near future re MOKBEL cartel and source is well

285 FASOC, [28]; Defence, [28].
286 Exhibit D7, 2.
287 Exhibit D7, 3.
288 Exhibit D7, 4.
289 Exhibit D7, 4–5.
290 Exhibit D7, 5–6.

placed to provide ongoing intel. Risk assessment still pending but DSU management essential.

424 On 3 November 2005, an update from Mr O'Brien was noted in the source management log, to the effect that the task force was approved to commence on 14 November 2005.[291]

425 According to the source management log, the registration application was completed for transmission by hand to Detective Acting Superintendent Cowlishaw on 22 November 2005. A risk assessment was completed for transmission by hand to Mr Cowlishaw the following day.[292]

426 The risk assessment was Part C of the Informer Registration/Reactivation Application. As required by CCI 03/05,[293] the risk assessment for Ms Gobbo was completed by Mr Smith, her handler, in consultation with Mr Black, another officer within the SDU who was acting as Ms Gobbo's controller in Mr White's absence. It is the best evidence available to me of the SDU officers' assessment of the risks of proceeding to engage Ms Gobbo as an informer. The section concerning the risks to Ms Gobbo is reproduced here in full:[294]

RISK TO SOURCE OF COMPROMISE

The Risks: What can happen and how.	Level of Risk
The Source is a criminal Barrister, who is extremely well known within the legal fraternity. The Source is a member of the executive committee of the Victorian Criminal Bar Association, and was the Treasurer of this organization in 2003/04. The Source is also very well known within the Police and criminal community. The Source has been depicted in various visual media regarding a number of high profile criminal matters over the past few years. Because of this, and the Source's frequent attendance at the major Melbourne Courts, the Source's physical appearance is easily identifiable. Any meeting between the Source and Handlers presents the risk of compromise.	High

291 Exhibit D7, 6.
292 Exhibit D7, 7.
293 See [216] above.
294 **Exhibit P50**: Informer Registration/ Reactivation Application — Part C Risk Assessment, 1–3.

The Source is currently acting for several members of the MOKBEL criminal cartel, including Tony MOKBEL [redacted] MNI: 903555700. This group has been known to employ extreme violence in the pursuit of their enterprises, and intelligence holdings indicate that this group regards breaches of their criminal code of silence as a matter of extreme concern. This group is very well resourced, and has obvious access to very large amounts of money. The greatest risk to the Source would be that of compromise of the Source's role to anyone connected with this group.	High
Over the past 12 months, the Source has had conversations with several Police members, including members of Operation PURANA and the Major Drug Investigation Division, regarding the possibility of the Source assisting Police. Some of these members are now aware that the Source has in fact formalized her relationship with Victoria Police. The Handler believes that it is highly likely that unidentified close work associates of these members are also aware of this fact. Further, current members of the Australian Federal Police and Australian Crime Commission may also be aware that the Source was considering the possibility of covertly assisting Police. The threat of compromise through a casual conversation, or otherwise, by these, or the other unknown members, must be considered a high risk.	High
In September 1993, The Source was charged with possessing and using Amphetamines (for which she received a Bond without conviction). The Source states that she does not use or have any interest in illicit drugs. The Source's work and lifestyle bring the Source into constant contact with criminals involved in the drug trade, who are likely to use drugs themselves, as well as having ready access to any illicit substances. It is unknown whether the Source would use "recreational" drugs, therefore the risk of compromise to the Source through this activity cannot be assessed.	Significant
It is believed that the Source has had intimate relationships with some Police members, and it is not known if any of these are ongoing. The Source does admit to being friends with some Police members, and appears to enjoy the company of male Police members. The Source will regularly meet other Police, either through work related contact, or through social activities, and the Source lives an active social life, predominantly within inner city Melbourne. Risk of compromise exists if the Source does not maintain a high level of awareness in her relationships with other Police members.	High
The Source states that she has a very small group of people in whom she has total trust. These include Solicitor Jim VALOS of VALOS BLACK & Associates. The Source may confide in VALOS as to her role as a Source. VALOS is also an active criminal defence lawyer, [redacted]. If VALOS became aware of the Source acting as such, it is unknown whether he would pass this information on to unknown third parties.	Significant
The Source states that she is particularly close to her family. She also	Low

states that she keeps her family completely separate from her working life. It is unlikely that the Source would divulge her role to family members.	
The Source has stated a strong desire to be free of the clients who tend to consume a large proportion of the Source's time and resources, and thus create a great deal of stress to the Source. The Source states that her sole motivation for acting as a Source is to be rid of the clients in this category, specifically being those who belong to the MOKBEL criminal cartel. The Source feels she cannot initiate an end to these relationships in an open and direct manner with those concerned, due to tacit and subtle intimidation being applied to the Source. If the Source decides that Police are not acting on the intelligence provided appropriately, a feeling of frustration may cause the Source to take unknown radical action in order to rid herself of contact with these people.	Significant
As stated above, the Source states that she feels to be under a great amount of stress. If the Source is not able to withstand the psychological pressure of dealing with the targets, as well as acting as a Source, further emotional strain may result.	Significant
In 2004, the Source suffered a stroke, at age 31 years. The Source believes that this was largely caused by stress, emanating from an extremely hectic work schedule involving long hours, and prolonged contact with high level criminals. After this stroke, the Source did initially reduce her work load, however, it appears that she now has resumed an extremely busy schedule of work commitments.	Significant
The Source may possess other motivations and agendas not yet known to Handlers.	High
The source is an intelligent individual who appears to be acutely aware of the risk of physical harm if compromised. The Source is aware of the need for various security measures to be adhered to when dealing with Handlers. It appears unlikely that the source would ever declare herself as an informer in any circumstances.	Moderate
The source is entrenched in the Melbourne legal community, including having previously been the secretary of the Victorian Criminal Bar Association. Thus the Source has connections to numerous barristers and solicitors acting for various crime figures at all levels. Due to the very nature of this work, and the persons involved in its day to day business, interaction with these people presents a further avenue for potential compromise of the Source.	Significant
Information supplied by the Source may be passed on to other Law Enforcement Agencies, likely to be Federal agencies involved in significant drug investigations. This may be cause for further potential compromise of the Source.	High
The Source may come into possession of intelligence known only to the Source and the targets. If acted upon, this would compromise	Significant

the Source.	
Risk Determination: The overall risk of compromise to the source is considered HIGH.	
Control Measures: [redacted]	

427 After sections detailing the risks to the handlers and controller of being jeopardised and the risks to the integrity of information, there are two more sections on the risk to Victoria Police of exposure and the risk of public harm, which are reproduced here in full:[295]

RISK TO VICTORIA POLICE OF EXPOSURE

The Risks: What can happen and how.	Level of Risk
It is possible that the Source enjoys acting as a police agent. Although this does not seem to be the Source's main motivation for assisting police, risk exists if the Source becomes over enthusiastic about this role.	Moderate
The Source has an extremely confident and strong personality. Whilst this is may be a bonus in assisting the Source to [redacted] and the like, it may tend to make the Source less likely to detect signs of suspicion exhibited by persons with whom she has contact.	Moderate
The Source has been involved as a defence barrister in numerous County and Supreme Court trials involving well known criminal identities, and as a result is extremely well versed in police procedures. However, it is likely that the Source is not totally au fait with the intricate nature of some methodologies, for example, [redacted] or, [redacted] and the detail of some other matters. Deployment of this Source will increase her knowledge of covert police methodology. Having regard to the Source's career focus, this presents risk to Victoria Police.	High
The Source is highly likely to supply intelligence that will trigger tactical responses, and, because of her position with the likely targets, these actions and results will be clearly visible to the Source. This may provide further evidence of Police methodology to the Source.	High
The Source has suggested that her business premises be "bugged" or that the Source carry a recording device, in order to make recordings of conversations with potential targets and others. Lack of control over the Source's actions regarding this could lead to: • Compromise of source identity	High

[295] Exhibit P50, 5–7.

• Jeopardise investigations • Adversely affect Victoria Police	
Because of the Source's occupation and particular position, if compromised, the handling of this Source would come under extreme scrutiny. This could cause embarrassment and criticism of the Force. This must be considered and balanced against the proposition of not utilizing the Source, and the potential resultant harm to the public that may occur through lack of intelligence against very large scale drug traffickers	Significant
There is no current intelligence to suggest the source is criminally active, although there has been speculation on this subject. The Source is aware that she has previously been captured on electronic surveillance, which the Source states was always due to communications regarding routine matters with legitimate clients. Further, because of her position within the community, the Source is unlikely to be criminally overtly active, at the very least through fear of denting her reputation as a lawyer.	Moderate
Risk Determination: The overall risk to Victoria Police of exposure is considered HIGH. **Control Measures:** [redacted]	

RISK OF PUBLIC HARM

The Risks: What can happen and how.	Level of Risk
Tasking and deployment of the Source will involve the Source fraternizing with high level criminals, however, this occurs during the course of the Source's day to day business. This is an environment in which the Source feels comfortable and would pose no risk of harm to the public.	Moderate
The Source displays to Handlers a high degree of a feeling of moral duty to uphold the law. Whereas this position must be constantly scrutinized, it appears unlikely that the Source would be openly involved in activities that would have a negative impact on her position, and thus the general community.	Low
This source is not motivated by a need to avoid court imposed penalties. Public confidence will not be adversely impacted through the provision of letters of assistance to this source.	Low
This source does not represent any threat of violence towards the public.	Low
Risk Determination: The overall risk of Public Harm is considered MODERATE.	

Control Measures:
[redacted]

428 The overall assessment section was completed by Mr Black on 23 November 2005:[296]

OVERALL ASSESSMENT

Risk Determination:

The overall risk determination is HIGH.
The nominated control measures are considered appropriate.

Value: (Intelligence / Deployment):

This Source has extensive connections to both high level and local criminal identities.

To date, the Source has established a short history of providing wide ranging and accurate intelligence.

This Source has the ability to provide accurate and timely intelligence concerning local and major crime.

The Source is capable of being deployed in the criminal environment. High level suspects appear to trust the Source and speak openly in their presence.

The Source is a criminal barrister in the Victorian legal community and represents many high profile criminal identities. One group of clients is the MOKBEL family, who are regarded as one of the major drug trafficking consortiums in Australia.

The effective utilisation of the Source has the potential to impede major crime and reduce the illicit drug trade. Failure to do so will have the opposite effect.

Recommendation:

Source is considered high risk and is both strategically and tactically viable.

DSU management is therefore recommended.

429 According to CCI 03/05, on receipt of this documentation the LIR was responsible for assessing the suitability of the informer, evaluating any identified risks, and considering potential risks and risk management strategies, before deciding whether to approve the registration application.[297] There is no evidence of what consideration the risk assessment received, or by whom. Mr Black, who might have known, was not asked. Mr Overland did not see it, and did not know who had.[298]

430 The monthly source review recorded in the source management log for 28

296 Exhibit P50, 7.
297 See [218]–[219] above.
298 Transcript (21 October 2024) 1634:15–1635:11 (Overland XXN).

November 2005 was:[299]

> HS remains active and consistent intel provider. Specific tasking of HS pending commencement of Op POSSE task force. Source remains high risk, risk assessment unchanged. Ongoing management by DSU essential.

431 Dr Harfield was not provided with or asked to comment on the risk assessment.[300]

Duty of care

(8) In or about September 2005, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore know, or ought they have known, that Ms Gobbo:

(a) was vulnerable, being concerned about her health, scared for her welfare, and under pressure as a result of her gangland connections;

(b) was being induced by Mr Rowe, Mr Mansell, Mr White, and Mr Smith to assist MDID and Purana investigations;

(c) relied on them and Mr Rowe, Mr Mansell, Mr White, and Mr Smith to protect her from harm as a result of disclosing confidential information about her clients;

(d) was at serious risk, including risk of death, if confidential information disclosed by Ms Gobbo to Victoria Police was revealed outside Victoria Police?

(9) In or about September 2005, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore know, or ought they have known, that:

(a) they could not protect Ms Gobbo from being exposed as an informer; and

(b) in that event, there was a risk of her suffering harm?

(10) In light of the answers to questions 8 and 9, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore owe Ms Gobbo a duty to take reasonable care to avoid her suffering injury in connection with being induced to and providing information to Victoria Police, including confidential information relating to her clients?

432 It is convenient to consider these three questions together in relation to each of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, and Mr Whitmore.

Mr O'Brien

433 On 31 August 2005, Mr Rowe and Mr Mansell reported to Mr O'Brien about the conversations they had with Ms Gobbo that day. Mr Mansell's diaries indicate that

299 Exhibit D7, 7.
300 Transcript (15 October 2024) 1189:12–23 (Harfield XXN).

he updated Mr O'Brien several times that day about their contact with Ms Gobbo.[301] Mr O'Brien was at that time the officer in charge of Purana.

434 There is no evidence of exactly what Mr Rowe and Mr Mansell told Mr O'Brien about their conversations with Ms Gobbo. However, the plaintiffs submitted that I should find that Mr O'Brien knew, or ought to have known, all of the matters alleged. They relied on the rule in *Jones v Dunkel*, and the State's failure to call either Mr O'Brien or Mr Rowe to give evidence.

435 The State submitted that, logically, Mr O'Brien's knowledge could be no higher than that of Mr Rowe and Mr Mansell. It accepted that it might be inferred that Mr O'Brien had some information about Ms Gobbo's concerns, including:

(a) health concerns, arising from her relationship with Mr Mokbel;

(b) that she felt conflicted in respect of Mr Bickley;

(c) that she was concerned for her safety if it became known she was cooperating with police; and

(d) that Mr Rowe and Mr Mansell told her she would be managed by specialist officers.

436 On that basis, I find that on 31 August 2005, Mr O'Brien was informed by Mr Rowe and Mr Mansell that Ms Gobbo was under pressure as a result of her gangland connections and held general concerns for her health and welfare. To that extent, Mr O'Brien knew that she was vulnerable. He also knew that Mr Rowe and Mr Mansell were encouraging Ms Gobbo to consider becoming an informer and were planning to introduce her to the SDU. Mr O'Brien understood that, if she became an informer, there was a risk that she would be exposed and, if that occurred, she would be at risk of harm.

437 In other words, Mr O'Brien had the same knowledge that Mr Rowe and Mr Mansell

[301] Exhibit P76, entry for 31 August 2005.

had after their conversations with Ms Gobbo. As I have found, they were not inducing her to become an informer, gave no assurances about her safety, and did not have reason to believe that she was relying on them to protect her from harm. They therefore could not have passed on that understanding to Mr O'Brien.

438 Otherwise, there was scant evidence about Mr O'Brien's involvement in the recruitment of Ms Gobbo as an informer. Mr O'Brien was named as her current controller in the request for assistance from the SDU dated 7 September 2005.[302] He was present at meetings on or about 19, 26, and 27 September 2005 at which Ms Gobbo's recruitment as an informer was discussed. Those meetings emphasised strict information security and the need to ensure that Ms Gobbo was not 'burned' as a result of any investigation.[303] Mr O'Brien was subsequently involved in developing the investigation plan for Operation Posse, using information provided by Ms Gobbo.[304]

439 Drawing all available inferences from that evidence, I find that Mr O'Brien:

(a) knew on 7 September 2005 that the SDU had been asked to assess Ms Gobbo's suitability to become an informer;

(b) knew from 19 September 2005 that Ms Gobbo had been registered as an informer and could provide information about Mr Mokbel and his associates; and

(c) understood that there was a danger that Ms Gobbo might be exposed as an informer and, if that occurred, would be at risk of serious harm, including risk of death.

440 As to whether Mr O'Brien owed the alleged duty of care to Ms Gobbo, the short answer once again is that she was not being induced to provide information to Victoria Police.

302 See [265] above.
303 See [412], [415], [418] above.
304 See [420]–[424] above.

441 Looking at the matter more broadly, I do not consider that the salient features of Mr O'Brien's relationship with Ms Gobbo gave rise to a legal duty to take reasonable care to avoid foreseeable risks of harm to Ms Gobbo in connection with being recruited as a police informer.[305] Until 19 September 2005, Mr O'Brien was in a similar position to Mr Rowe and Mr Mansell, except that he had not directly spoken with Ms Gobbo about her interest in assisting police. He was involved in requesting the SDU's assistance, but did not introduce Ms Gobbo to Mr White and Mr Smith. Soon after the SDU became involved, Mr O'Brien learned that Ms Gobbo had become an informer and was providing information about Mr Mokbel and others. However, he was not responsible for assessing Ms Gobbo's suitability to become an informer.

Mr Hill

442 Mr Hill was the officer in charge of Mr Rowe and Mr Mansell at MDID. On 7 September 2005, Mr Hill made the request for the SDU to assist in relation to Ms Gobbo's interest in talking with police.[306] The following day, he attended a meeting with Mr White, along with Mr Rowe, Mr Mansell, and another officer, where there was a discussion about assessing Ms Gobbo as a human source.[307] Mr Hill attended the meetings on or about 19 and 27 September 2005, with Mr O'Brien and others, where the recruitment of Ms Gobbo as an informer was discussed.[308]

443 From these scraps of evidence, I am prepared to draw the same inferences that I drew in relation to Mr O'Brien's knowledge and understanding of the circumstances of Ms Gobbo's recruitment.[309] Those findings do not support a conclusion that Mr Hill owed the alleged duty of care to Ms Gobbo, or that he had a duty to take reasonable care to avoid foreseeable risks of harm to her in connection with being recruited as a police informer.

Mr Thomas

305 See [368]–[374] above in relation to the legal principles on duty of care.
306 See [265], [267](a) above.
307 See [409] above.
308 See [412], [419] above
309 See [439] above.

444 In September 2005, Mr Thomas was the Central Informer Registrar for the IMU. He was named as the 'LIR' on the Informer Registration Application completed for Ms Gobbo on 16 September 2005.[310] On or about 27 September 2005, there was a discussion with Mr Thomas about the security measures for information provided by Ms Gobbo, and how it would be recorded in the IMU database.[311]

445 According to CCI 07/03, the LIR was responsible for evaluating risks and assessing the suitability of an informer, and deciding whether to approve an application for registration.[312] While Ms Gobbo was first registered on 16 September 2005, the formal registration application with the detailed risk assessment was not completed until 23 November 2005. By this time, CCI 07/03 had been reissued without amendment as CCI 03/05.[313] This document was apparently delivered to Mr Cowlishaw, who I infer was with the IMU at the time.[314] While there is no direct evidence that the document was seen or considered by Mr Thomas,[315] the plaintiffs submitted that I should draw that inference.

446 In the absence of any evidence that Mr Thomas did not perform the function assigned to him under CCI 03/05, I infer that he did so. He was nominated as LIR for Ms Gobbo in the application to register her as an informer, which gave him responsibility to decide whether to approve the application. After receiving the detailed risk assessment in late November 2005, Mr Thomas knew, or ought to have known, everything that Mr Smith put in the risk assessment, including Mr Black's overall assessment at the end of the document.

447 As a result, I am satisfied that Mr Thomas knew, or ought to have known, by late November 2005 that:

(a) Ms Gobbo had suffered a stroke in 2004, which she attributed to stress from

310 See [Error: Reference source not found] above.
311 See [418]–[Error: Reference source not found] above.
312 See [218]–[219] above.
313 See [235] above.
314 See [425] above.
315 See [Error: Reference source not found] above.

her 'extremely hectic work schedule' and 'prolonged contact with high level criminals'. She reduced her workload after the stroke, but had 'resumed an extremely busy schedule of work commitments'. She felt that she was under a great amount of stress.

(b) Ms Gobbo had approached police to supply information, motivated by a strong desire to be free of a group of clients including the Mokbel criminal cartel. She felt that she could not initiate an end to her relationships with these clients 'due to tacit and subtle intimidation' being applied to her.

(c) Within a short time she had provided wide ranging and accurate intelligence.

(d) The Mokbel group had 'been known to employ extreme violence in the pursuit of their enterprises' and regarded 'breaches of their criminal code of silence as a matter of extreme concern'. The greatest risk to Ms Gobbo would be compromise of her role to anyone connected with the group. This risk was rated as 'High'.

(e) Ms Gobbo appeared to be 'acutely aware of the risk of physical harm if compromised', and of the need for various security measures to be taken when dealing with her handlers.

(f) The overall risk determination was high, with a number of control measures recommended.

448 The overall picture of Ms Gobbo painted in the risk assessment is not one of vulnerability. She was described as intelligent, with 'an extremely confident and strong personality' and an active social life. She was also noted to be 'entrenched in the Melbourne legal community', with a large group of friends and associates, many of them 'well educated astute individuals involved in the legal fraternity'.[316] In particular, there is no hint in the risk assessment that Ms Gobbo had been induced by any police officer to provide information to police. To the contrary, one of the

316 Exhibit P49, 3.

risks identified was that she possibly 'enjoys acting as a police agent' and could become over-enthusiastic about the role.[317]

449 Ms Gobbo was not in fact induced to provide information to police, and so Mr Thomas could not have owed her a duty to take reasonable care to avoid harm in connection with being induced. However, in light of Mr Thomas's responsibilities as the nominated LIR for Ms Gobbo, and the information provided in the risk assessment, I consider that he had a duty to take reasonable care to avoid foreseeable risks of harm to Ms Gobbo in connection with being recruited as a police informer.

Mr Purton

450 In September 2005, Mr Purton was the commander in the Crime Department, with oversight of both MDID and Purana. He was present at the meetings on 19, 26, and 27 September 2005 at which Ms Gobbo's recruitment as an informer was discussed. As noted in relation to Mr O'Brien, there was emphasis in those meetings on the need for strict information security and to ensure that Ms Gobbo was not 'burned' as a result of any investigation.[318] The evidence that Mr Purton was present at those meetings is the only evidence that he was aware of Ms Gobbo's situation.

451 At the very most, the limited evidence in relation to Mr Purton might support the same inferences that I drew in relation to Mr Hill.[319] Those inferences are not a basis for a finding that Mr Purton owed the alleged duty of care to Ms Gobbo, or that he had a duty to take reasonable care to avoid foreseeable risks of harm to her in connection with being recruited as a police informer.

Mr Whitmore

452 Mr Whitmore was the superintendent in the Crime Department overseeing Purana as at September 2005. The only evidence regarding his involvement is that he was present at the Purana update meeting on 26 September 2005.[320] He had even less involvement than Mr Hill and Mr Purton, and so cannot have known more than

317 Exhibit P49, 5.
318 See [412], [415], [418], [438] above.
319 See [439], [443] above.
320 See [415] above.

either of them about the circumstances of Ms Gobbo's recruitment as an informer. That limited knowledge is not sufficient to give rise to the alleged duty of care, or a duty in the alternative terms considered.

Mr Overland

453 Mr Overland is the most senior member of Victoria Police alleged to have owed a duty of care to Ms Gobbo in relation to her recruitment as an informer. He had no involvement in recruiting her — indeed, they never met. However, because of his position as Assistant Commissioner Crime he was informed of her recruitment.

454 The State admitted that on 12 September 2005, Mr Overland was present at a Purana meeting where there was a discussion about a plan for Ms Gobbo to speak to the SDU.[321] Mr Overland did not recall that discussion, and was adamant that it was on 26 September 2005 that he was informed that Ms Gobbo had been registered as an informer.[322] His diary entries are consistent with that recollection, with his first note about '3838' appearing in notes of a Purana update on 26 September 2005.[323] Mr Overland said that her registration was essentially presented to him as a *fait accompli*, and that he had no information about assurances given to Ms Gobbo by her handlers before she was registered.[324]

455 Mr Overland was aware that Ms Gobbo was being managed by the SDU. He had been involved in the Dedicated Source Handling Teams Project, and the decision to establish the SDU to separate the management of sources from the Crime Department.[325] As Assistant Commissioner Crime, he had no role in the management of the SDU. He was aware of CCI 07/03, understood the concept of a sterile corridor, and considered that the management of Ms Gobbo could be left to the SDU.[326]

321 See [410] above.

322 Exhibit D3: Redacted supplementary statement of Simon Overland to the Royal Commission into the Management of Police Informants dated 17 January 2020, [69]–[83]; Transcript (18 October 2024) 1553:9–18 (Overland XXN); Transcript (23 October 2024) 1715:23–29 (Overland XXN).

323 Exhibit P112, entry for 26 September 2005.

324 Transcript 1778:3–8 (Overland XXN).

325 Exhibit D2, [151]–[152].

326 Transcript (18 October 2024) 1556:30–1557:1; (21 October 2024) 1579:2–17 (Overland XXN).

456 Asked about his understanding of Ms Gobbo's situation that led her to agree to become an informer, Mr Overland said:[327]

> So my recollection, Your Honour, in September of 2005 was that on being made aware that she was becoming a human source, it was obvious to sort of enquire as to the circumstances that had led to that. The advice I got from investigators who I understood had been involved in the process of her becoming registered, was effectively that, that she had over-stepped professional boundaries in dealing with her clients, particularly Mr Mokbel and his associates, that she felt compromised because of that. She had become privy to information that was about ongoing criminal activity and sensitive, and she was stressed by that, and she wanted to extricate herself from those arrangements. She understood the difficulty of doing that and I think, given the level of [violence] that existed in that era at the time, she understandably had a fear for her own safety should she do anything to compromise herself or try and leave, and, you know, she felt her life was at risk because of that.

457 Mr Overland explained his understanding of Ms Gobbo's reason for coming to Victoria Police:[328]

> … I believe she had put herself into a position where her life was at risk before she came to Victoria Police, that's my understanding as to why she came and why she was recruited. My experience again of organised crime, particularly for people who I would call professional advisors like Ms Gobbo, you can't resign. You just can't walk away from those roles because you know too much. So my view was she was trapped or felt trapped and she came to Victoria Police as a way out.

458 In those circumstances, he understood that becoming a human source was the 'least worst option' for Ms Gobbo, although in normal circumstances that would be an extraordinary proposition.[329]

459 Mr Overland readily agreed that becoming an informer increased Ms Gobbo's risk profile very significantly. He said that, informing against serious and violent organised crime, 'there was a real risk that she could be killed'.[330] He later added that 'being a human source against serious organised crime is high risk by definition'.[331] Further, he understood that there was a risk of her role being disclosed, and the longer she stayed as an informer, the more likely it was that she

327 Transcript (23 October 2024) 1776:25–1777:14 (Overland XXN).
328 Transcript (18 October 2024) 1562:19–28 (Overland XXN).
329 Transcript (23 October 2024) 1716:5–1717:6 (Overland XXN).
330 Transcript (18 October 2024) 1562:31–1563:16 (Overland XXN).
331 Transcript (21 October 2024) 1573:8–11 (Overland XXN).

would be compromised.[332]

460 In addition, Mr Overland had concerns from the outset arising from Ms Gobbo's position as a legal practitioner. He was aware of her legal and ethical obligations, and the potential for them to be compromised by her role as informer.[333] In particular, he was conscious of the danger that she might provide information or be tasked in relation to clients in a way that would infringe legal professional privilege.[334]

461 Mr Overland did not see the risk assessment prepared by the SDU in November 2005.[335]

462 Mr Overland's evidence on these matters was clear. It was not shaken during a lengthy cross-examination, in which his credit was not impugned. I do not accept the plaintiffs' submissions that I can draw inferences that contradict Mr Overland's evidence from the State's failure to call other witnesses or tender additional documents. In particular, there is no basis to infer that Mr Overland somehow knew everything that the frontline officers knew about Ms Gobbo's situation, despite his firm evidence of what he did and did not know in September 2005.

463 I make the following findings in relation to Mr Overland's knowledge in September 2005:

(a) Mr Overland knew from 26 September 2005 that Ms Gobbo had been registered as an informer and was being handled by the SDU. He may have been aware two weeks earlier of the plan for her to speak with the SDU.

(b) He knew that she was under pressure due to her gangland connections, in particular her association with Mr Mokbel and his associates. He understood that she had come to police as a way out of a situation where she felt she was

332 Transcript (18 October 2024) 1559:21–1560:28 (Overland XXN).
333 Exhibit D2, [12], [94].
334 Exhibit D2, [124].
335 Transcript (21 October 2024) 1634:7–11, 1635:7–14 (Overland XXN).

trapped and her life was at risk.

(c) Mr Overland was not aware of Ms Gobbo's health concerns.

(d) Mr Overland understood the risks to Ms Gobbo of becoming an informer against serious organised crime. He knew that she might be killed if she was exposed as an informer.

(e) He also understood that there was a danger that she might be exposed as an informer, despite the steps he was taking to see that information she provided was treated with the utmost care. He appreciated the potential for her to provide privileged or confidential information about her clients, exacerbating the risk of exposure.

464 Ms Gobbo was not induced to become an informer, and Mr Overland had no understanding that she had been prevailed upon in any way. As far as he was aware, Ms Gobbo had approached police seeking a way out of a difficult situation. He gave her no assurances and was not aware that any had been given. He knew that she was being handled by the SDU, which he regarded as appropriate and in keeping with CCI 07/03.

465 Although he was not directly involved in recruiting Ms Gobbo, Mr Overland had an acute appreciation of the risks to her of becoming an informer. He also had some insight into the heightened level of risk associated with her being a legal practitioner with ethical obligations to her clients.

466 Mr Overland's seniority within Victoria Police sets him apart from the other investigators alleged to have owed Ms Gobbo a duty of care — Mr O'Brien, Mr Hill, Mr Purton, and Mr Whitmore. While the SDU was not under his command, he was nevertheless in a position of authority and influence, including because he reported directly to Chief Commissioner Christine Nixon. Within a few days of learning that Ms Gobbo was a registered informer, he had briefed the Chief Commissioner with

that information.[336] He took the exceptional step of briefing the Chief Commissioner about an operational matter because he appreciated the sensitivities of using Ms Gobbo as a human source.[337] As far as the evidence reveals, Mr Overland was the only person within Victoria Police command who was aware of Ms Gobbo's recruitment, and the only person who could have intervened to stop it.

467 In those circumstances, I consider that Mr Overland had a duty to take reasonable care to avoid foreseeable risks of harm to Ms Gobbo in connection with being recruited as a police informer.

468 Mr Overland also had duties to ensure public safety, investigate crime, and apprehend offenders. He was also bound by CCI 07/03, which contemplated the use of informers for the purposes of investigations, and provided a framework for managing the associated risks. As with Mr White and Mr Smith, these duties must be taken into account in assessing what a reasonable person in Mr Overland's position would have done.

Breach

(11) In respect of any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore who owed a duty of care to Ms Gobbo, would a reasonable person in each of their positions:

(a) not have had members of Victoria Police induce Ms Gobbo to be an informer; or

(b) stopped any communications between members of Victoria Police and Ms Gobbo that provided confidential information about her clients?

(12) If so, did any of them fail to take that precaution?

(13) In light of the answers to questions 11 to 12, did any of Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore breach their duty of care to Ms Gobbo?

Mr O'Brien, Mr Hill, Mr Purton, and Mr Whitmore

469 None of Mr O'Brien, Mr Hill, Mr Purton, or Mr Whitmore owed a duty of care to Ms Gobbo in relation to her recruitment as an informer. Even if they had, Victoria

336 Exhibit D3, [78].
337 Exhibit D3, [79]–[82].

Police policy at that time was to use informers to investigate crime, and for high risk informers to be managed by the SDU. Their roles as investigators had been deliberately separated from the management of high risk informers, and none of them was in a position to stop Ms Gobbo communicating with her handlers in the SDU. Reasonable police officers in their position would have left the management of this particular high risk informer to the specialist SDU, which is what occurred.

470 The plaintiffs have not established any breach of a duty of care owed to Ms Gobbo by Mr O'Brien, Mr Hill, Mr Purton, or Mr Whitmore.

Mr Thomas

471 A reasonable person in Mr Thomas's position as LIR would have considered the risks and benefits of registering Ms Gobbo as an informer — or confirming her registration — in accordance with CCI 03/05.[338] This required him to assess the suitability of the informer, evaluate any identified risks, consider potential risks and risk management strategies, and ensure compliance with relevant policy and guidelines. He also had to ensure that there had been adequate consideration of duty of care issues.

472 There is no evidence that Mr Thomas did not do this. There is simply no evidence of the consideration that Mr Thomas — or anyone else in the IMU — gave to the November 2005 risk assessment, and nothing from which inferences may be drawn. The rule in *Jones v Dunkel* does not permit me to fill that gap by speculating about the evidence Mr Thomas might have given.[339]

473 Dr Harfield was not briefed with the risk assessment. In cross-examination, he agreed that the risk assessment considered each of the five categories of risk that were required by CCI 03/05 to be addressed.[340] He later noted that the risks assessed to be 'high' equated to 'red flags', which were strong indications either not to go

338 See [218], [235] above.
339 See [199] above.
340 Transcript (15 October 2024) 1189:12–1190:2 (Harfield XXN).

ahead or to proceed with extreme caution.[341] Beyond that, Dr Harfield expressed no opinion about the risk assessment and its recommendation that Ms Gobbo be managed by the SDU. This would have been difficult to do, given that the control measures recommended in the risk assessment were all redacted, due to uncontested claims of public interest immunity.

474 The plaintiffs have not established that Mr Thomas, as the nominated LIR, breached the duty of care he owed to Ms Gobbo.

Mr Overland

475 The plaintiffs submitted that a reasonable person in Mr Overland's position would never have permitted Ms Gobbo to be recruited. On becoming aware that Ms Gobbo had been registered, his only option was to order both Purana and the SDU to cease using her as an informer.

476 Mr Overland disagreed with this proposition. He agreed that, in a general sense, he had significant concern how Ms Gobbo was going to be handled as a human source. He assumed that she was being managed consistent with the requirements of CCI 03/05 and other operational arrangements.[342] He put his faith in those arrangements, believing that the SDU would be capable of managing Ms Gobbo.[343] He was also conscious of the need to maintain the sterile corridor — that is, the separation between investigation and management of human sources.[344]

477 Mr Overland maintained that he did not have power to stop the registration of Ms Gobbo as an informer, because the SDU and IMU were not under his command.[345] He agreed that he could have ordered Purana not to use Ms Gobbo as a source, but not that it was a reasonable thing to do. He said:[346]

> Yes, but why would I if she had come to Victoria Police on the basis that she

341 Transcript (15 October 2024) 1194:31–1195:16 (Harfield RXN).
342 Transcript (18 October 2024) 1559:13–20, 1559:3–12 (Overland XXN).
343 Transcript (18 October 2024) 1556:23–30 (Overland XXN).
344 Transcript (18 October 2024) 1556:23–1557:1, 1559:1–12 (Overland XXN). In relation to the concept of the 'sterile corridor', see Transcript (21 October 2024) 1624:16–28, 1675:17–1676:13 (Overland XXN).
345 Transcript (21 October 2024) 1618:2–5 (Overland XXN).
346 Transcript (21 October 2024) 1618:16–30 (Overland XXN).

> felt her life was at such risk that she took the extraordinary step of becoming a human source, to provide information to allow police to apprehend those people whom she feared and to protect her life that way. Were I to do what you are now suggesting it would have been both unlawful because it was counter to the Chief Commissioner's instruction, and had I done that, and had she then been killed, I'm sure you or someone very like you would be asking me a series of impossibly difficult questions about how I had actually done that. So at all times I was concerned, but at all times my thinking was about how best to protect her life.

478 The plaintiffs relied on the opinion evidence of Dr Harfield. Some of that evidence is set out at [392] to [393] above, to the effect that a reasonable senior officer in similar circumstances would have directed that Ms Gobbo not be recruited to act as an informer.

479 Dr Harfield accepted that Mr Overland would not have had operational responsibility for recruiting or managing Ms Gobbo.[347] He gave the following answers to questions specific to Mr Overland:[348]

> **Question 5: Should Overland have permitted the First Plaintiff to assist Victoria police with its investigations by their registration /not stopping the registration on 16 September 2005? Why or why not?**
>
> 20. It follows from my previous response that the answer to this is no. In my opinion, whilst acknowledging that an officer of Mr OVERLAND's seniority would not normally be involved in the recruitment and registration of informers, having become aware of the possibility of the First Plaintiff being so recruited, it is reasonable to suppose, and it is more probable than not, that another officer in similar circumstances would have used the authority of their position and seniority to prevent the registration taking place, for the reasons outlined in paragraphs 17 and 18 above.
>
> **Question 6: If 'no' to the preceding question, what should Overland have done about those police officers who had been engaging with the First Plaintiff to assist Victoria police with its investigations as at 16 September 2005?**
>
> 21. Had Mr OVERLAND determined that the First Plaintiff should not be recruited as an informer, in my opinion it is reasonable to suppose that he could and would also have ordered that members of Victoria Police already engaged in dialogue with the First Plaintiff on the issue of becoming an informer, should advise the First Plaintiff that they would not be recruited and registered, and then break off the recruitment relationship with the First Plaintiff.
>
> **Question 7: As at 26 September 2005, was it appropriate for Overland to**

347 Exhibit P4, [15]; Transcript (15 October 2024) 1160:25–1161:8 (Harfield XXN).
348 Exhibit P4, [20]–[22].

'very carefully manage' the First Plaintiff as a police informer, rather than not have them as a police informer? Why or why not?

> 22. On the basis of my practitioner experience, specialist role training, and understanding of what constitutes good practice in informer management, and for the reasons itemized at paragraphs 17 and 18 above, in my opinion the First Plaintiff was not suitable to be recruited as an informer. It follows that I am of the opinion that it was not appropriate to manage the First Plaintiff as an informer, "very carefully" or otherwise.

480 As I have described at [394] to [398] above, the opinions that Dr Harfield expressed in his reports were qualified by his evidence at trial. In the end, he agreed that Ms Gobbo's situation was unique and that there was no absolute prohibition on recruiting her as an informer.[349] It was reasonable to make a risk-based assessment of the competing considerations, using the risk matrix in the relevant policy, which he accepted was appropriate for its time.[350]

481 The plaintiffs also submitted that Mr Overland was not powerless to stop the use of Ms Gobbo, by virtue of her being managed by the SDU. They said he could and should have exercised his power as head of the Crime Department to stop it. They pointed out that he was on the steering committee for the Dedicated Source Handling Teams Project and had been instrumental in setting up the SDU. They said that he could have made inquiries about the information Ms Gobbo was expected to provide, and was providing, to the SDU. The plaintiffs said Mr Overland could also have given direction to Mr Thomas in the IMU, not only about information management but about the continued use of Ms Gobbo.

482 I accept that submission. Mr Overland was a senior and influential person in Victoria Police in September 2005. As Assistant Commissioner Crime he reported directly to the Chief Commissioner. He was a member of the Corporate Committee responsible for the governance of Victoria Police, along with 26 or so other people who, at that time, reported to the Chief Commissioner.

483 Had Mr Overland wanted, there were a range of steps he could have taken to stop

[349] Transcript (15 October 2024) 1135:16–1136:10, 1143:12–26 (Harfield XXN).
[350] Transcript (15 October 2024) 1150:12–27, 1152:24–1153:1 (Harfield XXN).

the use of Ms Gobbo as an informer. He could have made inquiries of the SDU about how it was managing the legal and ethical minefield presented by Ms Gobbo's recruitment. If he had not been satisfied with the answers, he could have raised his concerns with the Chief Commissioner. He could also have directed Purana and the rest of the Crime Department not to use information provided by human source 3838 (which may have caused the SDU to review the resources they were devoting to managing her). While all of these would have been extraordinary steps to take, it was within Mr Overland's power to take them.

484 However, I am not persuaded that, at that early stage, the risks to Ms Gobbo were so overwhelming that the only reasonable course for Mr Overland was to try to stop Victoria Police from using her as a source. There are two reasons for that conclusion.

485 First, Mr Overland understood that Ms Gobbo became an informer because she was already in danger from her gangland associations, and felt her life was at risk. He believed that she had approached police for help to get out of that situation. Although Ms Gobbo's evidence at trial downplayed those dangers, Mr Overland was not challenged about the accuracy of his understanding. I accept that his assessment of the risks involved in Ms Gobbo becoming an informer was affected by his understanding that she was already at risk.

486 Second, Dr Harfield's evidence was that there was no straightforward conclusion that a barrister should never be used as a human source. Mr Overland assumed that Ms Gobbo was being managed by the SDU in accordance with CCI 03/05. That policy required a detailed risk assessment to be undertaken, using a risk matrix that was adequate to the purpose. That was done, as Mr Overland assumed it would be, albeit two months after Ms Gobbo was first registered. The document provided to the IMU in November 2005 contained a frank recognition of the many and serious risks to Ms Gobbo, and identified control measures to address those risks. In September 2005, it was reasonable for Mr Overland to rely on the policies and procedures that Victoria Police had in place for the management of high risk

informers.

487 For those reasons, the plaintiffs have not established that Mr Overland breached his duty of care to Ms Gobbo.

Ongoing negligent permitting claim

488 Ms Gobbo's third claim is that Mr Overland was negligent in continuing to permit, or failing to stop, her being a police informer until 2009. A useful starting point is a chronological account of the evidence of Mr Overland's involvement in matters concerning Ms Gobbo, in the context of other significant events that took place after September 2005.

489 In about October 2005, Victoria Police commenced an investigation of the Mokbel group, known as Operation Posse.[351] The source management log indicates that the investigation plan for Operation Posse was developed with a view to using Ms Gobbo as an active source.[352]

490 Mr Overland was overseas on a study tour between 22 October and 22 November 2005.[353]

491 In March 2006, Ms Gobbo was appearing as junior counsel for Mr Mokbel in a Supreme Court trial of drug importation charges against him.[354] One Monday morning, Mr Mokbel failed to answer bail, the trial proceeded in his absence, and he was convicted.[355] He fled Australia and was at large until he was apprehended in Greece in June 2007.

492 On 22 April 2006, Mr Cooper was arrested by police as part of Operation Posse.[356] He was a drug cook and a significant figure in the Mokbel drug manufacturing and distribution network. Ms Gobbo had been briefed to act for Mr Cooper on a number

351 Exhibit D2, [72].
352 Exhibit D7, 1–7.
353 Exhibit D3, [162].
354 **Exhibit P107**: Facts admitted by EF with position of AB, [31(g)].
355 See *R v Mokbel* [2006] VSC 119.
356 Exhibit P107, [1]–[5].

of occasions between November 2002 and April 2006. From October 2005, she had provided police with information about Mr Cooper's activities, which resulted in his arrest on 22 April 2006. After his arrest, Mr Cooper requested that Ms Gobbo be contacted. She attended the police station at which he was held and spoke with him twice. This was a big arrest for Purana, as Mr Cooper subsequently 'rolled', making admissions on his own behalf and implicating a number of others.

493 Ms Gobbo's role in these events was a breathtaking breach of her legal and ethical obligations to Mr Cooper. This was obvious to her, then and now. In a meeting with Mr White and Mr Smith two days before the arrest, they raised questions of conflict of interest and 'the general ethics of the whole situation', to which Ms Gobbo responded 'The general ethics of all of this is fucked'.[357] At trial, Ms Gobbo accepted that her conduct had amounted to perverting the course of justice.[358]

494 Mr Overland was aware that Ms Gobbo provided information that assisted with this arrest, specifically about where methamphetamines were being manufactured by Mr Cooper and others.[359] He does not appear to have been aware that Ms Gobbo was acting for Mr Cooper at the time of his arrest, or to have turned his mind to her ethically compromised position.[360]

495 On 26 April 2006, the SDU completed an updated risk assessment.[361] It identified a number of additional risks of compromise of Ms Gobbo, including because of the large number of police who were aware of her role, and informal communication of intelligence to investigators at Purana. Further control measures were identified to address these risks. The overall risk determination remained high, and the nominated control measures were considered appropriate, with ongoing management by the SDU recommended. There was no suggestion that Mr Overland ever saw this document.

357 Exhibit P54, 273.
358 Transcript (9 October 2024) 866:27–879:12 (Plaintiff XXN).
359 Transcript (18 October 2024) 1557:27–1558:15 (Overland XXN).
360 Transcript (21 October 2024) 1636:28–1637:14, 1645:10–1648:17 (Overland XXN).
361 **Exhibit P51**: Informer Registration/Reactivation Application — Part C Risk Assessment dated 26 April 2006, 2–4.

496 Also on 26 April 2006, the SDU submitted a Request for Informer Reward form, for the consideration of the Informer Payments Committee.[362] The request recommended the withdrawal of two speeding fines issued to Ms Gobbo on 3 February 2006, which would likely have resulted in the suspension of her driver's licence. It provided a detailed summary of the assistance provided by Ms Gobbo:[363]

> This Human Source is providing extremely sensitive information on a number of very high level drug manufactures and traffickers, and has been doing so for several months. This large volume of information has been found to be exceptionally accurate and timely, and is being disseminated to Operation PURANA for current operations. It is expected that the Source will continue to provide vital intelligence in the foreseeable future.
>
> To date the information generated by the source has resulted in the compilation of over 107 Information reports. The dissemination of these IRs has included numerous to Purana Task Force, ESD, MDID and OCS.
>
> Due to the status of this source she is seen as extremely valuable and is committed to assisting Police which is occurring on a daily basis.

497 The form stated that the source's motivation for providing the assistance was moral, and that she was placing her personal safety at extreme risk by supplying the information.

498 For some reason, Mr Overland was, or was on, the 'Committee' that considered the reward request.[364]

499 On or about 17 May 2006, Mr Overland met with Mr White and Mr Smith to discuss the reward request.[365] During this meeting, they discussed a 'termination process' or 'exit strategy' for Ms Gobbo.[366] The record of the meeting in the source management log was:[367]

> [Mr White] and [Mr Smith] meet with A/C OVERLAND, Crime re issue of potential reward to HS and termination process. A/C to consider acknowledgement of appreciation by A/C. Discussed motivation and counselling for source. …

362 **Exhibit P116**: Reward Application dated 26 April 2006, 2–3.
363 Exhibit P116, 2.
364 FASOC, [48I]; Defence, [48I].
365 Transcript (23 October 2024) 1715:11–14 (Overland XXN); Exhibit D2, [131]–[132]; Defence, [48E].
366 Defence, [48E]; First Overland statement, [131]–[132].
367 Exhibit D7, 31.

500 Mr Overland could not recall the need for counselling for Ms Gobbo or the reason why it was discussed.[368] He recalled his reasons for initiating discussion of an exit strategy as follows:[369]

> Early in the time that I knew of Ms Gobbo's role as a human source with Victoria Police, I raised the need for an exit strategy with those officers managing her. I believed that while Ms Gobbo was a valuable source in terms of the information she provided, Victoria Police needed a strategy to manage an end to the relationship in such a way that that could primarily ensure her safety.
>
> As time passed I recall forming the view that is very probable that one or more of the people against whom she was informing, would have concluded that she was a human source, and was betraying them. She had for example, played a pivotal role in the dismantling of the Mokbel drug syndicate and the ultimate recapture of Tony Mokbel in Greece. I believed it was likely that she was suspected by members of the Mokbel family and associates and that the ensuing criminal prosecutions were likely to result in either further basis for suspicion, or confirmation of her role as a human source. This increased my concerns about the risks to her life.
>
> However I believed that it was not an option to simply discontinue the relationship. Victoria Police owed her a duty of care. I was fearful that if she was de-registered she would likely continue to engage in inappropriate and high-risk relationships without any constraints or safeguards and that may result in her death or serious injury.

501 At trial, Mr Overland confirmed that it was his view that the longer Ms Gobbo was a human source, the more likely it was that she was going to be compromised.[370] He said that his thinking by April/May 2006 was that, if Ms Gobbo had not been 'burnt' by that time, she might be able to be managed out and get on with the rest of her life.[371] Mr Overland thought that, with Mr Mokbel out of the country, there was an opportunity to both disconnect Ms Gobbo from Mr Mokbel and his associates and manage her out of being an informer.[372] Mr Overland suggested to Ms Gobbo's handlers that it was time to be thinking of an exit strategy. He understood that they considered it, but decided that it would be too high risk.[373]

368 Transcript (21 October 2024) 1654:19–1655:9 (Overland XXN).
369 Exhibit D2, [128]–[130].
370 Transcript (18 October 2024) 1559:30–1560:8 (Overland XXN).
371 Transcript (18 October 2024) 1560:21–1561:1 (Overland XXN); Transcript (21 October 2024) 1616:10–24 (Overland XXN).
372 Transcript (21 October 2024) 1617:7–22 (Overland XXN).
373 Transcript (21 October 2024) 1619:7–16 (Overland XXN).

502 In June 2006, Mr Overland was appointed a Deputy Commissioner of Victoria Police.[374] In that role he was responsible for corporate leadership and management in Victoria Police, as well as developing integrated responses to key issues across government. He reported directly to the Chief Commissioner, but had no formal line responsibilities for any part of Victoria Police. Rather, he was responsible for corporate leadership and management across the organisation, with particular focus on the areas of crime, intelligence, and service delivery. However, with the Chief Commissioner's agreement, Mr Overland continued to oversee Purana. He also established and participated in the steering committees for Operation Briars and Operation Petra, investigations of homicides in which serving or former police officers were suspects. He remained a member of the Corporate Committee responsible for the governance of Victoria Police.

503 On or about 7 December 2006, Mr Overland met with Detective Inspector Gavan Ryan, the officer then in charge of Purana, and asked Mr Ryan about 'easing out' Ms Gobbo as a police informer.[375] Mr Overland did not recall receiving an update from Mr Ryan about an exit strategy at that time.[376]

504 An entry in the source management log for 12 July 2007 recorded that enquiries were being made via Mr Overland about prohibiting questioning of Ms Gobbo at the Office of Police Integrity (**OPI**) that would reveal her role as a source.[377] Mr Overland recalled being aware at some point that the SDU was anxious that Ms Gobbo would be called to give evidence at an OPI hearing, potentially compromising her role as informer.[378] He said that the issue was sorted out and Ms Gobbo was not called, but did not remember whether he was directly involved.

505 On or about 17 July 2007, Mr Overland had a meeting with Mr O'Brien and Superintendent John Blayney, in which Mr Overland discussed the risks to Ms

374 Exhibit D2, [37]–[39].
375 FASOC, [48G]; Defence, [48G]; Transcript (23 October 2024) 1715:14–17, 1739:6–12 (Overland XXN).
376 Transcript (23 October 2024) 1738:6–1739:5 (Overland XXN).
377 Exhibit D7, 117.
378 Transcript (21 October 2024) 1671:8–1672:27, (23 October 2024) 1749:3–14 (Overland XXN).

Gobbo of being a police informer.[379] Mr Blayney raised the need for independent legal advice about the legal complexities surrounding the use of Ms Gobbo as an informer.

506 On or about 6 August 2007, Mr Overland met with Mr Ryan, Mr White, Mr Blayney, and Superintendent Biggin and discussed a termination process or exit strategy to have Ms Gobbo cease being a police informer.[380] In his statement, Mr Overland referred to a log entry made by Mr White, recording:[381]

> Meet with Deputy Commissioner Overland, Superintendent Biggin, Blayney and Detective Inspector Ryan re 3838 management update. Three options available: deactivate, ongoing management with no taskings, or witness. Agreed witness not an option by virtue of fact that ongoing communication will be required re court issues re Mokbel trials. Agreed 3838 to be managed with no taskings, and any intel to be risk assessed with Superintendent Biggin prior to dissemination or actioning. Discussed utilising 3838 to speak to targets re Op Petra and Op Briars to generate conversations re electronic surveillance.

507 Mr Overland's own recollection was:[382]

> … I think at some point superintendent [Blayney] raised an issue about legal advice about — around [Ms Gobbo]. My recollection now is that he then went to speak to those responsible for managing her about that and about just again, the general situation with respect to her after a conversation with me and I think some others, and this in a sense was reporting back on that. But again, my recollection is that again, my concern was about well, how do we actually manage this relationship to a close in a way that provides for the safety of [Ms Gobbo]. I think that they were coming back to see me to talk through where they'd got to.

508 He said that it was a long meeting, with quite a degree of discussion.[383] He was receiving advice about what the options were, and what was safe to do and not to do. The advice he received in 2007 was that the risk was such that it was not safe to manage Ms Gobbo out of the organisation, and that she should continue to be managed as a source by the SDU.[384]

379 FASOC, [48J]; Defence, [48J].
380 FASOC, [48K]; Defence, [48K].
381 Exhibit D2, [133].
382 Transcript (23 October 2024) 1750:8–20 (Overland XXN).
383 Transcript (23 October 2024) 1751:18–22 (Overland XXN).
384 Transcript (21 October 2024) 1658:1–1659:9, (23 October 2024) 1779:15–1780:8 (Overland XXN).

509 On or about 5 December 2008, Mr Overland met with Mr White, Mr Biggin, and Mr Black, and expressed the view that Ms Gobbo should be used as a witness rather than a police informer.[385] The relevant entry in the source management log read:[386]

> [Mr White] and [Mr Black] meet with Supt BIGGIN re issues using HS as witness.; DC OVERLAND present. Made clear that HS value as witness more important than perceived issues.
>
> …
>
> Decision that preferable that Petra deploy HS in case deployment becomes evidentiary — need barrier/break b/w SDU management and Witness management.

510 Mr Overland explained why he had formed that view by December 2008:[387]

> Ms Gobbo's role changed from that of a source to a potential witness when she became a potential witness for Operation Petra. This arose because of the recorded conversation she had with Paul Dale, in which Dale essentially corroborated Carl Williams' statement against him. I recall being involved in many discussions over a number of weeks about whether Ms Gobbo should be used as a witness. I discuss this further below. I recall that members of the SDU were very opposed to this prospect.
>
> Ms Gobbo's role as a witness in relation to the Hodson murders was initially caused by action she took. I had no role in authorising or encouraging her recording of a conversation with the main suspect Paul Dale, which I now understand happened in late 2008. I only learned about it after the event. My recollection is that Ms Gobbo had taken these actions on her own initiative. This caused me concern, as it was part of a pattern of behaviour I recall being reported, whereby she was difficult to control and would act on her own initiative. This carried significant risks for her, of which she did not appear to have a proper appreciation.
>
> Ms Gobbo also agreed to go into Witness Protection as a consequence of becoming a witness, but later changed her mind.
>
> Efforts to discontinue or limit her role as a human source had not been successful. I thought the risk that she would be killed or seriously injured to be very high; that she had or would soon be compromised in that the criminals against whom she had informed would become aware of that fact, either through their own deductions or via discovery in criminal proceedings and that the only viable alternative to keep her safe, in any event, was to have her enter the Witness Protection program. This would have meant that ultimately Ms Gobbo would have been given a new identity and re-located to a safe location.
>
> My recollection is that Victoria Police officers assigned to Operation Petra

385 FASOC, [48L]; Defence, [48L].
386 **Exhibit D8**: 11792958SML — source management log for Gobbo while registered as 2958, 58.
387 Exhibit D2, [135]–[139].

> discussed with Ms Gobbo the option of her becoming a witness and entering witness protection. My recollection is that I was informed by investigators that she was open to this course of action.

511 In his evidence at trial, Mr Overland recalled the circumstances in which Mr Gobbo transitioned from being an informer to being a witness:[388]

> My understanding was that she wasn't tasked, my understanding at the time was that she had on her own part determined to record a conversation that became highly relevant to the Petra matter. Again, it wasn't for me to determine whether the prosecution proceeded or not, but I was very involved in deliberations around whether [Ms Gobbo] could be used as a witness. My recollection is those deliberations went on over a number of weeks and involved direct conversations with [Ms Gobbo] by members of the Petra Taskforce about her preparedness to do that and understanding what that would mean. And I think you put this to me and it's right, the source development unit was not in favour of that step occurring and so there were quite protracted considerations about that issue. Best I could tell, by 5 December 2008 that was resolved and there was a decision made that she could be used as a witness in the Petra matter.

512 Mr Overland explained the considerations that he weighed in relation to this transition:[389]

> My understanding generally was that she was difficult to manage, that she would take risks, that she would act either without direction or against direction and all of that seemed to me to likely end badly for her. So they were relevant factors in trying to weigh the decision that needed to be made towards the end of 2008 about whether she became a witness. The advantage in my mind of her becoming a witness in addition to, you know, the evidence that she could give, was that she would go into the Witness Protection Program and be kept safe that way.

513 On 7 January 2009, Ms Gobbo signed a statement for the Petra taskforce, and on 12 January 2009 she was deactivated as a human source.[390] Mr White and two other handlers met with Ms Gobbo on 12 January 2009 and explained that she could not continue to be a human source after having made a statement to Petra. The relevant entry in the source management log about that meeting recorded:[391]

> …
>
> Discuss HS making statement to Petra and issues re same. Advised HS to have no more contact with SDU, and Petra will be liaison point. Encouraged

388 Transcript (23 October 2024) 1757:7–25 (Overland XXN).
389 Transcript (23 October 2024) 1760:11–22 (Overland XXN).
390 Exhibit D8, 63, 65.
391 Exhibit D8, 65.

engagement with WITSEC for own protection.

HS DEACTIVATED

514 Mr Overland observed that Ms Gobbo's 'transition to witness protection didn't work quite as smoothly as one might have hoped'.[392] That was something of an understatement. Over many months, Ms Gobbo and Victoria Police were unable to agree on the arrangements for her to enter the witness protection program. In April 2010, Ms Gobbo commenced a proceeding against the State, Mr Overland, and Ms Nixon seeking damages for injury, loss, and damage she had suffered in connection with her status as a witness in the prosecution of Mr Dale. That proceeding settled in August 2010, on terms that are examined below.[393]

515 Having set out that chronology of events, I now turn to the specific questions concerning the claim that Mr Overland negligently permitted Ms Gobbo's ongoing use as an informer.

Duty of care

(14) At any time between January 2006 and January 2009, did Mr Overland know, or ought he have known, that Ms Gobbo:

(a) was vulnerable, being concerned about her health, scared for her welfare, and under pressure as a result of her gangland connections;

(b) had been induced by Mr Rowe, Mr Mansell, Mr White, and Mr Smith to assist gangland investigations;

(c) relied on members of Victoria Police to protect her from harm as a result of disclosing confidential information about her clients;

(d) was at serious risk, including risk of death, if confidential information disclosed by Ms Gobbo to Victoria Police was revealed outside Victoria Police?

(15) At any time between January 2006 and January 2009, did Mr Overland know, or ought he have known, that:

(a) he and other members of Victoria Police could not protect Ms Gobbo from being exposed as an informer; and

(b) in that event, there was a risk of her suffering harm?

(16) In light of the answers to questions 14 and 15, did Mr Overland owe Ms Gobbo a duty to take reasonable care to avoid her suffering injury in connection with

392 Transcript (21 October 2024) 1675:11–16 (Overland XXN).
393 See [617]–[621] below.

providing information to Victoria Police, including confidential information relating to her clients?

516 As I have already found,[394] Mr Overland knew that when Ms Gobbo was registered as an informer, she had been under pressure due to her gangland connections, in particular her association with Mr Mokbel and his associates. He understood that becoming an informer against serious organised crime placed her at grave risk, and that she might be killed if she was exposed as an informer. Mr Overland appreciated that there was a danger of exposure, due to events beyond his control. He had some understanding that the risk of exposure was greater because Ms Gobbo was a legal practitioner.

517 On the other hand, Mr Overland had no belief that Ms Gobbo had been induced or prevailed upon to become an informer, or that she had been given assurances about confidentiality or her safety.[395] His understanding was that she had approached police as a way out of a difficult situation, in which her life was already at risk.

518 Mr Overland's initial concerns grew as time went on. He understood that the longer that Ms Gobbo continued providing information to police, the greater the risk that she would be compromised.[396] While the evidence does not support findings that Mr Overland knew, or ought to have known, that Ms Gobbo was disclosing confidential information about her clients, he did grow increasingly concerned for her safety. At some point before December 2008, he formed the view that she was placing herself at risk by her own conduct.[397]

519 The authorities relied on by the plaintiffs recognise that a duty of care is generally owed by police to an informer, by reason of the nature of the relationship.[398] This is reflected in Victoria Police policy on informers, including CCI 07/03 and CCI 03/05, which emphasised the duty of care owed to informers.[399] Mr Overland also

394 See [463], [465] above.
395 See [464] above.
396 See [459] above.
397 See [457], [510] above.
398 See [360], [369] above.
399 See [Error: Reference source not found], [217]–[218], [235] above.

considered that Victoria Police owed a duty of care to Ms Gobbo as an informer.[400] However, Victoria Police is not a corporate entity and cannot itself have a duty of care; any such duty must be owed by individual police officers.[401]

520 Mr Overland was a very senior member of Victoria Police between September 2005 and January 2009, particularly after he became Deputy Commissioner in June 2006. He knew that Ms Gobbo was an active informer against serious organised crime, and well understood the risks that posed to her safety. Although he was not involved in the detail of individual investigations, he had oversight of the use made by Purana of information provided by Ms Gobbo. It is difficult to think of anyone better placed within Victoria Police to take responsibility for its use of Ms Gobbo as an informer, and the evidence recounted above indicates that Mr Overland assumed that responsibility on behalf of the organisation. While I accept that the SDU was not under Mr Overland's direct command, I do not accept that he was powerless to intervene if he considered it necessary.[402]

521 For those reasons, I conclude that Mr Overland owed a duty to Ms Gobbo to take reasonable care to avoid her suffering injury in connection with providing information to Victoria Police.

Breach

(17) If 'yes' to question 16, would a reasonable person in Mr Overland's position have ended the use of Ms Gobbo as an informer before January 2009?

(18) If so, did Mr Overland fail to take that precaution?

522 The plaintiffs relied on the evidence of Dr Harfield to support their contention that a reasonable person in Mr Overland's position would have ended Ms Gobbo's use as an informer at an earlier time. Dr Harfield's opinions were expressed in his first report as follows:[403]

> **Question 8: As at 17 May 2006, when Overland considered an exit strategy for the First Plaintiff, acting reasonably, what should Overland have done**

400 Exhibit D2, [91], [130].
401 See [194]–[196] above.
402 See [466] above.
403 Exhibit P4, [23]–[24] (footnotes omitted).

at that time about the First Plaintiff being a police informer?

23. Mr OVERLAND refers, in his statement of 19th September 2019, six times to an exit strategy to disengage from the First Plaintiff as an informer. He refers twice to having "raised the need" for an exit strategy, and once to "seeking to have an exit strategy developed". On the basis of rank seniority and its associated authority, it is my opinion that it would have been open to Mr OVERLAND to order that an exit strategy be implemented.

Question 9: As at 17 July 2007, when Overland discussed with O'Brien and Blayney about obtaining independent legal advice about the use of the First Plaintiff as a police informer, should Overland, acting reasonably:

a. have obtained independent legal advice;

b. instructed police officers to cease using the First Plaintiff as a police informer;

c. ceased using the First Plaintiff as a police informer?

24. On the basis of my practitioner experience, specialist role training, and understanding of what constitutes good practice in informer management, it is my opinion that all three of these actions would have been reasonable at any time following the registration of the First Plaintiff as an informer. The seeking of legal advice would have been a prudent, reasonable, and appropriate action before the First Plaintiff was registered as an informer in September 2005.

523 It will be recalled that Dr Harfield's initial opinion was that Ms Gobbo should never have been recruited.[404] He qualified that opinion in the course of cross-examination, agreeing that there was at that time no absolute prohibition on the use of a lawyer as an informer, and that it was reasonable to make a risk-based assessment using the risk matrix in the relevant policy.

524 On the question of an exit strategy for an established informer, Dr Harfield agreed that it was not acceptable to simply cut them adrift, and said it would be necessary to have something in place to continue to monitor and mitigate risks.[405] One avenue would be to refer the informer to witness protection. Another reasonable course of action would be to keep the informer on, while not tasking them or disseminating any information they provided. He agreed that gently discontinuing the relationship might take some time, and might be difficult to manage if the informer

404 See [392]–[398] above.
405 Transcript (15 October 2024) 1170:7–1172:23 (Harfield XXN).

did not want the relationship to end.

525 Mr Overland's evidence was that his preference from around April 2006 was for Ms Gobbo to have been managed out of her role as informer, but that the consistent advice he received back from the SDU was that it was not safe to end the relationship. The following exchange took place towards the end of his evidence:[406]

> At any time before that did you form the view it was imperative that she cease being an informer for her own safety?---My view throughout, and I think we've referred to various meetings that occurred, my view throughout was that we really needed to have a plan to manage her out of the organisation. I kept getting advice that that wasn't safe to do and that there was a need to have a continuing relationship. Again, we referred to various points of evidence where I was advised she wasn't going to be tasked, there wasn't going to be evidence taken from her. So I received advice from those responsible for her management about where we're at. I mean, my preference throughout would have been to have her managed out of the organisation from April 2006. The advice I got back was that that wasn't possible.
>
> And who did you - - -?---Or safe.
>
> - - - receive that advice from, Mr Overland?---Well, I think initially having raised it with the SDU in April, I think at some point that's the advice I got back, whether it was in that meeting or later, and then again, I think Gavan Ryan on my behalf went and had a conversation with them and that was the advice back. And then again in 2007, I think about August 2007, again, that was the advice that came back.

526 Mr Overland repeated this evidence a little later:[407]

> Let me put to you another way. You had concerns throughout the whole of the time that the plaintiff was an informer, and you had concerns from the April of 2006 that she should be exited. If you wished to achieve that exiting, one of the ways to do so would be to bring it up with the Chief Commissioner and say you wished that to happen?---Yes, but the consistent advice that I got from those people who were expert in this area and responsible for her management, was that that was not advisable and it was safe to do. I followed that advice.

527 The source management log kept by the SDU for Ms Gobbo confirms that the SDU's position was that it was not safe to deactivate Ms Gobbo. For example, there is a record of a meeting on 18 November 2006 between Mr Biggin, Mr White, Mr Smith,

406 Transcript (23 October 2024) 1779:15–1780:8 (Overland XXN).
407 Transcript (23 October 2024) 1783:1–11 (Overland XXN).

and another officer, as follows:[408]

> Discuss deactivation of this HS. Duty of care will always be present therefore must maintain contact therefore de-registering not possible at this time. HS to be advised that intell will not be acted upon/passed on. HS to be advised that contact will be ongoing, urgent issues (re info) will be addressed as they arise.

528 Another relevant record from 6 August 2007 is set out at [506] above. The monthly source review on 18 June 2008 ends with the following recommendation:[409]

> This source must be managed by the SDU at least until all court matters that may compromise her are dealt with.
>
> The handling team will continue to talk to the source in regards to an exit strategy, encouraging the source to consider seeking employment interstate which appears to be her desire currently.

529 This remained the SDU's position until Ms Gobbo decided in late 2008 to become a witness in the prosecution of Paul Dale for the murder of the Hodsons.

530 In light of that evidence, I do not accept that, in the context of Mr Overland's duty of care to Ms Gobbo, a reasonable person in his position would have ended her use as an informer before January 2009. A reasonable person would have asked about an exit strategy, as Mr Overland did at intervals between May 2006 and December 2008. A reasonable person would also have accepted the advice that was given by those responsible for handling Ms Gobbo.

531 In addition, the advice given to Mr Overland was reasonable. Once the informer relationship was established, the risks to Ms Gobbo's safety gave rise to a duty of care. As Dr Harfield accepted, the relationship could not abruptly be ended with safety, because police had to have some means of monitoring and mitigating the risks. One reasonable way to do this was to maintain contact with Ms Gobbo, while not passing on any information she provided. The source management log indicates that this was the strategy adopted by the SDU in the second half of 2008, until the decision was taken in December 2008 for Ms Gobbo to become a witness in the

408 Exhibit D7, 67.
409 Exhibit D8, 32.

prosecution of Mr Dale and to cease being an informer.

(19) Did Ms Gobbo provide information to Victoria Police that was confidential to her clients or the subject of her clients' legal professional privilege?

(20) If so, in providing that information did Ms Gobbo engage in illegal activity for the purposes of s 14G of the Wrongs Act?

(21) If so, how should that illegal activity be taken into account in determining whether any Mr Overland breached his duty of care to Ms Gobbo?

532 Section 14G of the Wrongs Act provides:

> **Consideration of intoxication and illegal activity**
>
> (1) This section applies to a claim for damages in respect of death or personal injury brought by a person (**the plaintiff**) against another person (**the defendant**) alleging negligence.
>
> (2) In determining whether the plaintiff has established a breach of the duty of care owed by the defendant, the court must consider, among other things—
>
> (a) whether the plaintiff was intoxicated by alcohol or drugs voluntarily consumed and the level of intoxication;
>
> (b) whether the plaintiff was engaged in an illegal activity.

533 It was part of Ms Gobbo's pleaded case that she provided information to Victoria Police that was confidential to her clients and the subject of their legal professional privilege. The evidence made out that allegation at a general level, and in relation to some specific information disclosed by Ms Gobbo during the interview on 16 September 2005. Otherwise, neither side identified particular information disclosed by Ms Gobbo that was confidential to her clients or the subject of legal professional privilege.

534 In relation to illegal activity, Ms Gobbo accepted that informing on her clients was in breach of the Victorian Bar rules of conduct,[410] and that it breached her fiduciary duties and her obligations of confidence to her clients.[411] She agreed that she had obtained a financial advantage by deception, by accepting fees for her services as a lawyer from clients she had informed on.[412] Further, Ms Gobbo agreed that her

410 Transcript (8 October 2024) 690:27–693:1, 699:9–701:5, 701:26–704:23 (Plaintiff XXN).
411 Transcript (8 October 2024) 704:24–706:28 (Plaintiff XXN).
412 Transcript (10 October 2024) 953:3–955:4 (Plaintiff XXN).

provision of information to police in respect of Mr Cooper was an attempt to pervert the course of justice, and that speaking to him after his arrest at the request of police amounted to perverting the course of justice.[413] She also conceded that she had perverted the course of justice in relation to the convictions of Frank Ahec and Steve Cvetanovski.[414]

535 In its defence, the State contended that 'illegal activity' for the purposes of s 14G(2)(b) of the Wrongs Act extended beyond criminal activity to civil wrongs, such as breach of fiduciary duty and equitable obligations of confidence. The plaintiffs argued that 'illegal activity' was confined to criminal activity. By the close of the trial, the State appeared to accept that position. It submitted that 'the Court would be safe adopting a reasonably practicable approach to s 14G of the Wrongs Act that focuses on the nature of the conduct relied upon — here, perverting the course of justice and deceiving clients to pay fees on false premises, and doing so on an ongoing basis'.[415]

536 As to how those illegal activities should be taken into account in determining whether Ms Gobbo has established a breach of duty, the State submitted that the policy behind s 14G was not to reward a person with compensation for a wrong committed against them in the course of their unlawful activity. It argued that Ms Gobbo's illegal activity was premeditated, flagrant, and directly associated with the alleged breach. It said that, from the time of her registration in September 2005, Ms Gobbo's entire practice as a barrister was a charade, and that clients would never have briefed her and paid her fees had they known she was acting as a police informer. In those circumstances, the State submitted that significant weight should be given to Ms Gobbo's illegal conduct in the breach analysis.

537 The plaintiffs accepted that I must take illegal activity into account when determining breach, but said that I should conclude that it did not defeat Ms

413 Transcript (9 October 2024) 877:9–879:12 (Plaintiff XXN).
414 Transcript (9 October 2024) 880:3–881:11 (Plaintiff XXN).
415 Defendant's closing submissions, [278].

Gobbo's claim. That was because of the simultaneous wrongdoing of police officers in using the information she provided to prosecute offenders.

538 The evidence established specific instances of Ms Gobbo attempting to pervert and perverting the course of justice, in relation to the arrest of Mr Cooper in April 2006, and the prosecution and conviction of Mr Ahec and Mr Cvetanovski.[416] On any view, this was illegal activity for the purposes of s 14G(2)(b) of the Wrongs Act. However, there was no clear relationship between that illegal activity and the alleged breach of Mr Overland's duty of care. The risk to Ms Gobbo existed before the events of April 2006 and continued long afterwards.

539 I accept the State's submission that Ms Gobbo was engaged in illegal activity during her entire time as an informer, namely obtaining financial advantage by deception.[417] She accepted briefs and payment for her work, pretending that she was a barrister who would act in her clients' best interests and keep their confidences, when she was not. It is unlikely that any solicitor would have briefed Ms Gobbo on behalf of a client in a criminal proceeding, or that the client would have paid her fees, had they known that she was speaking freely to police about clients and their activities.

540 The plaintiffs have not established simultaneous wrongdoing on the part of Mr Overland. The evidence did not support their claims that he was a joint wrongdoer, or that he permitted Ms Gobbo's ongoing use as an informer because of the value of the information she was providing.

541 Ms Gobbo's illegal conduct over more than three years from September 2005 put her at serious risk of harm from any client who discovered that she was an informer. I take that into account in determining whether Mr Overland breached his duty of care to her by failing to stop her from informing at an earlier time.

(22) In light of the answers to questions 16 to 21, did Mr Overland breach his duty of care to Ms Gobbo?

542 While Mr Overland owed Ms Gobbo a duty to take reasonable care to avoid Ms

416 See [534] above.
417 *Crimes Act 1958* (Vic), s 82(1).

Gobbo suffering injury in relation to being an informer, he did not breach that duty. A reasonable person in Mr Overland's position did not have to end Ms Gobbo's use as an informer before January 2009. Mr Overland reasonably inquired about an exit strategy for her in May 2006, December 2006, and July/August 2007, and on each occasion accepted advice from the SDU that it was not safe to end the relationship. Although it makes little difference, I am reinforced in that conclusion by my finding that Ms Gobbo's own illegal conduct put her at risk of harm.

Causation

(23) Did any breach of duty cause or materially contribute to Ms Gobbo suffering:

(a) major depressive disorder;

(b) post-traumatic stress disorder;

(c) any other physical or psychiatric condition?

543 This question does not arise, since the plaintiffs have not established any breach of duty owed to Ms Gobbo. However, considerable evidence and argument was directed to the question whether Ms Gobbo suffered injury due to being exposed as an informer, and so I set out my conclusions for completeness. The answer to this question is also relevant to subsequent questions concerning whether time should be extended for Ms Gobbo to bring her claim, and the State's defence based on the 2010 release.

544 Ms Gobbo's case was that she was living an open and fulfilling life in the period from 2015 to 2018. She was fully engaged in raising her children, was involved in running their childcare centre and kindergarten, and enjoyed socialising with friends and extended family. She expected to be employed in the near future. The trigeminal neuralgia first diagnosed in 2006 was an ongoing issue but was being managed. She suffered significant injuries in a transport accident in February 2018, but these did not interfere with her daily activities and enjoyment of life. That all changed when Ms Gobbo's life was turned upside down after the High Court's decision in late 2018, in the ways outlined at [7] to [10] above. From that time, her physical and mental health deteriorated. She developed major depressive disorder

and a trauma and stress-related disorder, and aggravation of pre-existing medical conditions.

545 The State submitted that Ms Gobbo had a long and complex medical and psychiatric history, with evidence that she had first received mental health treatment in 2007 or 2008, and ongoing treatment thereafter. It noted that she had been given a range of different psychiatric diagnoses over the years, and made the following submissions about the conclusions that could be drawn:

(a) Ms Gobbo's major depressive disorder was a pre-existing condition that was not caused by her 2018 exposure as an informer. It arose in about 2009 or 2010, possibly earlier, and was relied on by Ms Gobbo in her 2010 proceeding. There are a range of significant contributing factors to the condition, including Ms Gobbo's physical health, that are unrelated to her claims in this proceeding.

(b) The cause and onset of any trauma and stress-related disorder suffered by Ms Gobbo were less clear on the evidence. It was apparent that Ms Gobbo had experienced a range of incidents or situations before December 2018 that, singly or in combination, may have contributed to the development of any stress-related disorder.

(c) The potential diagnosis of bipolar one disorder should not be accepted.

(d) Ms Gobbo has a range of significant complex physical health conditions that are relevant to her presentation, most of which pre-dated 2010. There was insufficient evidence to permit findings that any of her physical conditions were caused or aggravated by Ms Gobbo's exposure as an informer in 2018. Rather, the evidence indicates that Ms Gobbo has a range of unrelated physical conditions, including injuries from a car accident in February 2018, that contribute to her psychiatric conditions, functioning, and enjoyment of life.

546 There is no doubt that Ms Gobbo has a complex medical and psychiatric history. A large volume of medical evidence was tendered in relation to that history, dating back to 2004, when Ms Gobbo suffered a stroke. Due to the length and complexity of this history, questions of causation are difficult to answer, and it is hard to identify the date of onset of Ms Gobbo's psychiatric conditions.

547 The medical material included a number of reports from Dr Stephen de Graaff, a pain specialist who treated Ms Gobbo from 2008 onwards for chronic severe neuropathic facial pain and headache post stroke. It also included many reports from Ms Kaye Frankcom, a psychologist who treated Ms Gobbo from 2009 to 2021. Dr de Graaff and Ms Frankcom might have been able to shed light on the extent to which the exposure in 2018 contributed to Ms Gobbo's current symptoms, and when she first developed particular medical and psychiatric conditions. However, neither was asked to address those questions in a report, and neither gave evidence at trial.

548 In the end, only two medico-legal witnesses gave evidence at trial, both of them consultant psychiatrists. The plaintiffs called Dr Susan Brann, and the State called Dr Ilan Rauchberger.

Dr Brann

549 Dr Brann prepared three reports in relation to Ms Gobbo and gave evidence at trial.

550 In her first report dated 12 January 2024, Dr Brann diagnosed Ms Gobbo to have developed a post-traumatic stress disorder with dissociative symptoms and panic attacks in relation to the Victoria Police issues and circumstances noted in the detailed history taken by Dr Brann.[418] She also diagnosed Ms Gobbo to be suffering from a major depressive disorder, which was in partial remission.[419] In Dr Brann's opinion, stress was probably a factor in the development of some of Ms Gobbo's medical conditions, although it was beyond her expertise to comment on the physical conditions noted in the reports from other treating specialists.[420] Dr Brann

418 **Exhibit P1**: Psychiatric Report of Dr S Brann dated 12 January 2024, [118]–[140], [172]–[177].
419 Exhibit P1, [181].
420 Exhibit P1, [183].

considered that the pain disorder diagnosed by clinical psychologist Kaye Frankcom in 2012 was in remission.[421]

551 In her second report dated 16 July 2024, Dr Brann revised her diagnoses.[422] She considered that Ms Gobbo's symptoms fulfilled the criteria for other specified trauma and stressor-related disorder, rather than post-traumatic stress disorder.[423] The key reason for that change was the interpretation of diagnostic criterion A, which does not specify whether the actual or threatened serious injury can be psychological. In addition, Dr Brann considered that Ms Gobbo's major depressive disorder was no longer in remission, due to the presence of symptoms including depressed affect, numbness and detachment, and suicidal ideation.[424] Dr Brann had not changed her opinion that the pain disorder was in remission, but noted that ongoing physical pain symptoms were negatively impacting Ms Gobbo's life.[425]

552 In her third report dated 22 August 2024, Dr Brann confirmed the diagnoses given in her previous report.[426] In addition, Dr Brann had received further information that gave rise to an additional diagnosis of bipolar one disorder.[427] The textbook criteria for that disorder are that the person has experienced a manic episode which may have been preceded or followed by major depressive episodes. While it was not clear exactly when these symptoms first arose, Dr Brann considered it more probable than not that they were present in September 2005.

553 While Dr Brann's diagnoses were clear from her reports, she did not specifically address the date of onset of each condition, or the extent to which the diagnosed conditions were contributed to by the 2018 exposure of Ms Gobbo. Dr Brann was instructed that Ms Gobbo was pursuing a claim for injuries sustained since 2010, and that the precipitating event was the disclosure in 2018. She therefore undertook an

421 Exhibit P1, [184].
422 **Exhibit P2**: Supplementary Psychiatric Report of Dr S Brann dated 16 July 2024, [67].
423 Exhibit P2, [68]–[70].
424 Exhibit P2, [71]–[72].
425 Exhibit P2, [73]–[74].
426 **Exhibit P3**: Further Supplementary Psychiatric Report of Dr S Brann dated 22 August 2024, [114].
427 Exhibit P3, [115]–[131].

assessment of injuries and impacts from that time, without attempting to carve out periods of time or identify the extent to which events contributed to each single aggregate condition.[428]

554 These matters were explored with Dr Brann in cross-examination.

555 In relation to the diagnosed major depressive disorder, Dr Brann accepted that the history she had obtained from Ms Gobbo, including the medications prescribed for her, suggested a pretty serious history of depression commencing in 2007/8.[429] She agreed that the history indicated that in 2010 Ms Gobbo was desperate, in the sense of wanting to end her life.[430] Dr Brann confirmed that a number of events in Ms Gobbo's life were significant contributors to her depression, including the death of Ms Gobbo's mother in 2011, her subsequent falling out with her sister, her various medical conditions, and her transport accident.[431]

556 In relation to the trauma or stressor that gave rise to the diagnosed stressor disorder, Dr Brann said that she had focussed most on the events of more recent years — Ms Gobbo's need to be overseas and to live in completely different circumstances, and threats of her children being taken away if she did not do as she was told by police.[432] However, in cross-examination, Dr Brann accepted that there were a number of other traumatic events in Ms Gobbo's life that were sufficient to bring on a stress disorder. These included Ms Gobbo's experiences with Mr Mokbel, the occasion when Mr Veniamin threatened her outside her home, threatening text messages received in 2007–9, death threats, the firebombing of her car, and the February 2018 transport accident.[433] Dr Brann agreed that if any of those matters had given rise to post-traumatic stress disorder in Ms Gobbo, one would expect to see that condition remanifest itself over time in response to various circumstances.[434]

428 Transcript (4 October 2024) 496:16–497:21, 518:7–28 (Brann XXN).
429 Transcript (4 October 2024) 473:10–476:2 (Brann XXN).
430 Transcript (4 October 2024) 477:4–479:4 (Brann XXN).
431 Transcript (4 October 2024) 488:7–26, 489:12–21, 490:19–491:12, 499:25–500:11 (Brann XXN).
432 Transcript (4 October 2024) 515:27–516:15 (Brann XXN).
433 Transcript (4 October 2024) 488:7–27, 492:8–495:30, 520:25-522:31 (Brann XXN).
434 Transcript (4 October 2024) 523:1–7 (Brann XXN).

Dr Rauchberger

557 Dr Rauchberger prepared two reports dated 2 May 2024 and 7 October 2024.[435] In his opinion, Ms Gobbo had experienced psychiatric illness in the form of pre-existing major depressive disorder that was in remission and then relapsed in late 2019.[436] Ms Gobbo had described to Dr Rauchberger an episode of depression lasting about two years in 2019, which she attributed to significant stress pertaining to her involvement with Victoria Police as an informer, and promises made to her by police that did not eventuate.[437]

558 Dr Rauchberger also diagnosed Ms Gobbo with unspecified trauma and stressor-related disorder triggered by her involvement with Victoria Police from late 2019.[438] She denied traumatisation symptoms specifically related to earlier stressors over the years, such as threats to her life.

559 Dr Rauchberger did not agree with Dr Brann's diagnosis of bipolar one disorder on the information available to him.[439] In his opinion, presentations such as grandiosity, working long hours, feeling special, and a level of entitlement were more likely to be personality factors.[440]

560 Dr Rauchberger clarified that major depressive disorder is a condition that can go into remission and then relapse subsequently, as he had diagnosed in Ms Gobbo's case. Episodes of depression at different times are part of one underlying condition, not separate and discrete conditions.[441]

Consideration

561 Doing the best I can with this evidence, I find that the events that followed Ms Gobbo's 2018 exposure as a police informer caused a relapse of her pre-existing major depressive disorder. I accept Dr Rauchberger's opinion that Ms Gobbo

435 **Exhibit D4**: Psychiatric report of Associate Professor Ilan Rauchberger dated 2 May 2024; Exhibit D5: Supplementary psychiatric report of Associate Professor Ilan Rauchberger dated 7 October 2024.
436 Exhibit D4, [77].
437 Exhibit D4, [80].
438 Exhibit D4, [77].
439 Transcript (22 October 2024) 1684:11–24 (Rauchberger XXN).
440 Transcript (22 October 2024) 1704:27–1705:27 (Rauchberger RXN).
441 Transcript (22 October 2024) 1700:4–1701:2 (Rauchberger XXN).

suffered an episode of depression in 2009. The opinion is consistent with reports from Ms Frankcom and two treating psychiatrists, Dr Richard Yeatman and Dr Rosemary Schwarz, written in 2010.[442] Dr Brann accepted in cross-examination that Ms Gobbo had a history of depression, going back as far as 2007/8. It is clear from the evidence of both Dr Brann and Dr Rauchberger that Ms Gobbo's major depressive disorder has been present since at least 2009, with episodes of remission and relapse over the years.

562 I also find that Ms Gobbo developed a trauma and stressor-related disorder as a result of her dealings with police following her return to Australia in late 2019. Dr Rauchberger was precise about the cause of this condition, and I accept his opinion. He specifically ruled out earlier traumatic or stressful experiences as causes. Dr Brann made a similar diagnosis, but was less precise about the stressor that precipitated this condition, or its date of onset. To the extent their opinions conflict, I prefer Dr Rauchberger's because of his closer attention to timing and causation.

563 There are indications in some of the earlier reports that Ms Gobbo had traumatic symptoms before 2018.[443] Ms Gobbo herself claimed to be suffering from post-traumatic stress disorder in 2014, in a letter she wrote to the Chief Commissioner in October 2014.[444] However, there is no clear evidence of a diagnosis of a trauma and stressor-related disorder until after 2018.

564 The evidence does not support a finding that Ms Gobbo's exposure as an informer in 2018 caused or exacerbated the physical conditions from which she suffers at this time in her exceptionally complex medical history. There was no medical opinion that attributed any of her current physical complaints to those events. Dr Brann's general observation that stress was probably a factor in the development of some of

442 **Exhibit P13**: Dr RG Schwarz medical letter to Dr S de Graaff dated 10 June 2010; Exhibit P9: Dr R Yeatman medical letter to Dr S de Graaff dated 29 April 2010.

443 Eg, Exhibit D60: Letter from Ms Kaye Frankcom to Dr Rosemary Schwarz dated 1 September 2011.

444 **Exhibit P105**: Letter from EF to Chief Commissioner Ken Lay dated 30 October 2014. See also Exhibit P106: Letter from EF to Assistant Commissioner Stephen Fontana dated 6 July 2015.

Ms Gobbo's physical conditions was not a sufficient basis for such a finding.

565 Of course, these conclusions are not a finding that these conditions were the result of negligence on the part of Mr Overland, or any of the other police officers who owed a duty of care to Ms Gobbo. No breach of duty to Ms Gobbo has been established.

566 The State submitted that the true cause of the harm pleaded by Ms Gobbo was the action taken by Child Protection to protect the safety of the children following the family's return to Victoria in late 2019, in circumstances where Ms Gobbo had refused to enter the witness protection program. The submission had considerable force.

567 When Ms Gobbo became an informer in September 2005, the acknowledged risk to her safety was that she might be harmed or even killed by someone against whom she had informed. Since Ms Gobbo's informing became public in late 2018 and early 2019, some extreme measures have been taken to protect her and her children from this fate. The two years that the family spent living under the interim accommodation order made by the Children's Court were undoubtedly difficult and stressful, and it is not surprising that Ms Gobbo suffered psychologically.

568 The plaintiffs called Linda Gerdtz, an employee of the Department of Families, Fairness and Housing, who was closely involved with the family between late 2019 and 2021. She was a considered and compelling witness, and I accept her evidence without reservation.

569 Ms Gerdtz was the Child Protection worker who made the protection application for the children in December 2019.[445] She did so because she was satisfied on reasonable grounds that the children were in need of protection, in that they were at risk of significant harm, even death, from which their parents could not protect them. She remained of that view, and at no time did she consider it necessary to approach the Children's Court to vary the interim accommodation order. While acknowledging

[445] Transcript (16 October 2024) 1326:19–1328:3 (Gerdtz XN).

the severe restrictions placed on the family, Ms Gerdtz considered that the police were doing the best they could in a difficult situation. While the children could have lived a less constrained life, it would have been at the expense of being able to live with their mother. In Ms Gerdtz's view, the family's living arrangements were the least worst option available in their unique circumstances.

570 I do not underestimate the impact of this distressing period on Ms Gobbo, and accept that she suffered injury associated with the measures taken to ensure the safety of her children. However, those measures were taken in accordance with an order of the Children's Court, because of its satisfaction that the children were in need of protection. Any consequent injury to Ms Gobbo is not compensable.

Extension of time claim

(24) Is it just and reasonable to extend the time within which Ms Gobbo can commence the proceeding, having regard to the matters set out in s 27L of the Limitation of Actions Act and the plaintiffs' further and better particulars filed 9 October 2024?

571 The plaintiffs filed their writ on 7 September 2021, more than 12 years after the date of the last act or omission alleged to have resulted in the injuries with which Ms Gobbo's claim is concerned. As a result, the limitation period in respect of her claims had expired when the proceeding was commenced,[446] and Ms Gobbo seeks an extension of time under s 27K of the Limitation of Actions Act.

572 The Court may order an extension of the limitation period if it decides that it is just and reasonable to do so,[447] having regard to the matters set out in s 27L of the Limitation of Actions Act. That section provides, relevantly:

> (1) In exercising the powers conferred on it by section 27K, a court shall have regard to all the circumstances of the case, including (but not limited to) the following—
>
> (a) the length of and reasons for the delay on the part of the plaintiff;
>
> (b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant;

446 ***Limitation of Actions Act** 1958* (Vic), s 27D(1)(b).
447 Limitation of Actions Act, s 27K(2)(b).

(c) the extent, if any, to which the defendant had taken steps to make available to the plaintiff means of ascertaining facts which were or might be relevant to the cause of action of the plaintiff against the defendant;

(d) the duration of any disability or legal incapacity of the plaintiff arising on or after the date of discoverability;

(e) the time within which the cause of action was discoverable;

(f) the extent to which the plaintiff acted promptly and reasonably once the plaintiff knew that the act or omission of the defendant, to which the injury of the plaintiff was attributable, might be capable at that time of giving rise to an action for damages;

(g) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of the advice he or she may have received.

(2) To avoid doubt, the circumstances referred to in subsection (1) include the following—

(a) whether the passage of time has prejudiced a fair trial of the claim; and

(b) the nature and extent of the plaintiff's loss; and

(c) the nature of the defendant's conduct.

…

573 Limitation periods are imposed by the legislature for good reasons, including the effect of delay on the quality of justice, the oppression involved in litigating matters long after the event, the need for certainty and finality, and the speedy resolution of disputes.[448] A limitation period is not a mere signpost.[449] Limitation periods exist to achieve 'reasonable finality' in litigation, reflecting the public interest in a workable and accessible justice system, in which disputes are not endlessly relitigated.[450]

574 However, the legislature has enabled the Court to extend the limitation period where it is just and reasonable to do so. The onus rests on a plaintiff to show that there is a good reason to extend time.[451] At the same time, the discretion should be

448 *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, 552–3 (McHugh J, Dawson J agreeing at 544).

449 *Davies v Nilsen* [2015] VSC 584, [43].

450 See generally Murray Gleeson, 'Finality' [2013] (Winter) *Bar News: Journal of the NSW Bar Association* 33, 41.

451 *Prince Alfred College Incorporated v ADC* (2016) 258 CLR 134, [99] (French CJ, Kiefel, Bell, Keane and

exercised with an appreciation of the personal factors that contributed to the plaintiff's delay in commencing a proceeding.[452]

575 On 9 October 2024, the plaintiffs filed further and better particulars of their application for an extension of time, made in paragraph 13 of their reply to the State's amended defence, filed on 23 September 2024. They claimed that it would be just and reasonable to order an extension of the period of limitation applicable to their causes of action having regard to:

1. the fact of the First Plaintiff being a Victoria police informer was exposed in or about December 2018, which is a significant component of each of the Plaintiffs' claims;

2. much of the Plaintiffs' case relies on events that are the subject of transcript and audio recordings, discovered in this proceeding;

3. much of the Plaintiffs' case relies on events that are the subject of contemporaneous records in the possession of the Defendant, discovered in this proceeding;

4. the First Plaintiff's circumstances and the allegations she and the Second and Third Plaintiffs raise against the Defendant have been the subject of a significant investigation and scrutiny, including by way of the following:

    a. a report of Neil Comrie AO, APM dated 30 July 2012;

    b. a report of the Honourable Murray Kellam AO QC dated 6 February 2015;

    c. Supreme Court proceedings, resulting in judgments *AB & EF v CD* [2017] VSC 350, *AB v CD & EF* [2017] VSCA 338 and *AB (a pseudonym) v CD (a pseudonym); EF (a pseudonym) v CD (a pseudonym)* [2018] HCA 58 ('**the *AB* proceedings**'); and

    d. a Royal Commission into the Management of Police Informants resulting in a detailed Final Report dated November 2020 comprising 999 pages ('**the Royal Commission**').

5. the Plaintiffs have been under significant supervision of Victoria police officers which has caused or contributed to the delay in bringing the proceedings;

6. many of the facts on which the Plaintiffs rely in bringing their claims are admitted by the Defendant in its Defence;

Nettle JJ).

452 *Hunt v Holcombe* [2018] VSCA 248, [58].

7. the infancy of the Second and Third Plaintiffs means they are under a disability;

8. the First Plaintiff was unable to act prior to late 2018 as to do so would cause exposure of the First Plaintiff;

9. once exposed as a Victoria police informer, the First Plaintiff was severely restricted in her ability to bring her proceeding against the Defendant by virtue of her, and the Second and Third Plaintiffs' extraordinary circumstances and safety risks;

10. the First Plaintiff made inquiries to bring her causes of action in this proceeding in late 2018, but that firm of solicitors withdrew on being instructed to act for the Defendant in the Royal Commission;

11. while the First Plaintiff had had legal advice before late 2018, that was to receive legal advice regarding her exposure in the *AB* proceeding; and

12. the First Plaintiff has been restricted in her ability to bring her proceeding given the restrictions imposed upon her under the *Witness Protection Act 1991* (Vic).

Plaintiffs' submissions

576 The plaintiffs put their argument on this question by reference to the criteria set out in s 27L(1) of the Limitation of Actions Act. By the time of their final submissions at trial, the plaintiffs accepted that Ms Gobbo had a cause of action that she could have brought in 2014.[453]

577 As to the length and reasons for the delay on the part of Ms Gobbo, they acknowledged that the delay was some 19 years from the date of the acts and omissions on which her claims are founded. They accepted that Ms Gobbo suffered some injury in 2014, with the partial disclosure of her role as a police informer, but said that she suffered greater injury in 2018/19 when her name was revealed to the world. Had Ms Gobbo commenced a proceeding earlier, there would have been a question whether she was suffering from a recognised psychiatric injury. The plaintiffs referred to *Gnoato v Beverley Hills Nominees Pty Ltd*[454] as authority for the proposition that later realisation of the seriousness of injury may explain a delay in bringing a claim.

453 Transcript (21 November 2024) 1966:27–28, 1968:15–19 (Tobin address). The plaintiffs had previously contended that Ms Gobbo's causes of action did not arise until her exposure as an informer in late 2018/early 2019.

454 Supreme Court of Victoria, Crockett and Southwell JJ, 3 October 1991.

578 As to the extent to which there is likely to be prejudice to the State, the plaintiffs accepted that there may be general prejudice of unknown extent, due to the passage of time. However, no specific prejudice was claimed by the State.

579 As to the extent to which the State had taken steps to make available to Ms Gobbo means of ascertaining relevant facts, the plaintiffs referred to the significant investigation and scrutiny of the circumstances in which she became a police informer, including the Comrie Review in July 2012, the IBAC Review in February 2015, the *AB & EF v CD* proceedings between 2016 and 2018,[455] and the Royal Commission in 2019–20. They said that by making claims of public interest immunity, the State has not made available to Ms Gobbo all facts which might be relevant to her causes of action.

580 As to the time within which the cause of action was discoverable, the plaintiffs accepted that Ms Gobbo's causes of action were discoverable in 2014, but said that the nature and extent of her loss greatly increased after 2018.

581 As to the extent to which Ms Gobbo acted promptly and reasonably once she knew she might have a claim for damages, the plaintiffs emphasised that the principal injury did not emerge until 2018/9 and that Ms Gobbo only claims damages for her injuries from 2018. They said that to bring a proceeding before the reality of the exposure would in effect have created the exposure from which she sought protection.

582 The plaintiffs submitted that Ms Gobbo was unable to provide cogent instructions to a personal injury lawyer in 2017/8 by reason of various suppression orders. They said that, even after exposure following the High Court's decision, Ms Gobbo was extremely restricted in being able to take proceedings because she was either living overseas or subject to police control.

583 As to the steps taken by Ms Gobbo to obtain medical, legal, and other expert advice

[455] See [Error: Reference source not found]–[6] above.

and the nature of the advice she received, the plaintiffs said that the legal advice that Ms Gobbo received from 2016 focused initially on the *AB & EF v CD* proceedings, and then on the Royal Commission. It did not extend to advice about a claim for personal injuries.

584 In late 2018, Ms Gobbo made an inquiry of Bree Knoester at Holding Redlich, but was unable to provide any real information because there was a suppression order in place. Ms Knoester was unable to assist Ms Gobbo further, after Holding Redlich were appointed as solicitors assisting the Royal Commission.

585 The plaintiffs claimed that Ms Gobbo was restricted in her ability to obtain legal advice by the provisions of the ***Witness Protection Act*** *1991* (Vic). They also said that she did not have free contact with lawyers, doctors, and others before 2021, due to the living arrangements forced on the family by Victoria Police between 2019 and 2021.

586 For those reasons, the plaintiffs submitted that it was just and reasonable to extend the limitation period for Ms Gobbo's claims.[456]

State's submissions

587 By reference to authorities concerning the exercise of the discretion to extend time under s 27K of the Limitation of Actions Act,[457] the State submitted that the plaintiffs must persuade the Court that there is good reason for making an exception to the general rule and exercising the discretion in their favour.

588 The State did not contend that it had suffered any specific prejudice occasioned by the delay. However, it disputed the plaintiffs' claimed reasons for the delay.

589 While accepting the extensive publicity about Ms Gobbo's role as a police informer that followed the High Court's decision in November 2018, the State pointed to evidence that her role was first exposed in March 2014. It relied on a letter from

456 Referring to *Tsiadis v Patterson* (2001) 4 VR 114, [33] (Buchanan JA).

457 *Davies v Nilsen* [2015] VSC 584, [43]–[44]; *Azzam v Commonwealth of Australia* [2019] VSC 484, [62]–[63]; *Hunt v Holcombe* [2018] VSCA 248, [58]–[59], [69]; *Moore v Escott* [2022] VSC 353, [155].

Ms Gobbo to then Chief Commissioner Ken Lay, written in October 2014, in which Ms Gobbo threatened to sue Victoria Police for breach of its duty of care and said she was being treated for severe depression, anxiety, panic attacks, and post-traumatic stress disorder.[458]

590 The State said that fear of exposure was not a reason not to commence proceedings, since it was already common knowledge by 2014 that Ms Gobbo was an informer. From 2016 onwards, Ms Gobbo was a party to the *AB & EF v CD* proceedings, in which she was legally represented. Suppression orders made in that proceeding protected Ms Gobbo's identity from being disclosed. Similar measures were available for any proceeding Ms Gobbo may have brought before 2018, which indeed were sought and obtained in this proceeding when it was commenced.

591 The State rejected the suggestion that Ms Gobbo was not allowed to contact lawyers between December 2019 and September 2021 while the family were living in accordance with the Children's Court's interim accommodation order. It relied on the evidence of Ms Gerdtz that Ms Gobbo and her partner were not prevented from instructing solicitors during that time, and Ms Gobbo was in fact instructing lawyers in the Children's Court proceeding.

592 In those circumstances, the State submitted that no reasonable explanation had been provided for the seven year delay in commencing the proceeding, between 2014 and 2021.

Consideration

593 In March 2014, Ms Gobbo received a telephone call from Anthony Dowsley, a journalist with the Herald and Weekly Times, who advised her that a story would be published the next day naming her as a police informer. Victoria Police obtained an injunction prohibiting her identification, although Ms Gobbo believed that a country edition naming her had already been published by the time the injunction was granted.[459]

458 Exhibit P105.
459 Transcript (2 October 2024) 339:10–340:13 (Plaintiff XN).

594 The following story appeared in the *Herald Sun* on 31 March 2014:[460]

> **Lawyer a secret police informer**
>
> **EXCLUSIVE**
>
> Anthony Dowsley
>
> A PROMINENT underworld lawyer was recruited by Victoria Police to inform on criminal figures running Melbourne's drug trade for more than a decade.
>
> The controversial move to list the lawyer, whom the *Herald Sun* has chosen to name only as Lawyer X, as a registered informer gave the force unprecedented access to information on some of Australia's biggest drug barons and hitmen, including alleged corrupt police and others involved in Melbourne's gangland war.
>
> The force's biggest secret in turning a high-profile criminal lawyer into an informer brings into question police ethics in cultivating "human sources", which went spectacularly wrong after the informer became a witness in one of Australia's biggest criminal investigations.
>
> The case unravelled after another witness was killed.
>
> It ended with Victoria Police's then chief commissioner Simon Overland agreeing to a settlement with Lawyer X.
>
> The *Herald Sun* can also reveal a taskforce was then shut down without notice or explanation as investigators began probing Lawyer X had helped circulate more than 30 highly sensitive information reports stolen from the St Kilda Rd police complex in 2003.
>
> The investigation was taken over by another taskforce, which is believed did not pursue the lawyer.
>
> Just prior to the taskforce being shut down, then deputy commissioner Sir Ken Jones addressed investigators, who had spent six years working on the case, encouraging them to continue their work.
>
> Sir Ken, who had concerns on the handling of informers and witnesses, left the force and was a target of the Office of Police Integrity after a public fallout with Mr Overland. The force's "human sources" unit was also shut down and re-formed.

595 Ms Gobbo was aware that this article had been published, and was generally aware of what was being said about it. She agreed that anyone associated with the Mokbel crew, or probably anyone associated with criminal activities in Victoria, would have

[460] Exhibit D19: Article by Anthony Dowsley, *Lawyer a secret police informer* (tendered under s 60, Evidence Act) dated 31 March 2014.

known immediately that the lawyer referred to was Nicola Gobbo.[461] Anyone in Victoria who might have caused her harm arising from her informing would have known who she was, and that she was Lawyer X.[462]

596 On 30 October 2014, Ms Gobbo wrote a long letter to Chief Commissioner Lay, which reveals her understanding of her legal position at that time:[463]

> Dear Sir,
>
> **Re: Witness Protection Program and Victoria Police**
>
> I am writing to you to formally indicate my position in so far as your organisation's repeated offers to enter the Victoria Police Witness Protection program arising from the revelation of my informer/human source role in the media earlier this year.
>
> Leaving aside the fact that your program cannot and will not allow me any continuity of medical and psychological treatment (as well as all of the previous unresolvable intractable issues that have adequately been explained to your members on a number of occasions in recent months), I am not prepared to entrust everything personal to me and my children as well our privacy, safety and wellbeing to the very organization that promised and assured me that my assistance over a number of years would always remain confidential, yet failed so appallingly in protecting my status and indeed, has put my life as well as the lives of my children at risk.
>
> Victoria Police failed to properly and adequately protect my identity as an informer/human source; it is difficult to imagine a greater breach of its duty of care. I would not necessarily expect a response from you (or your lawyers either) on this assertion but should the matter ultimately end up being resolved in the Supreme Court, I am absolutely confident that the negligence of some of your members (past and present) will be able to be established.
>
> Consistent with the manner with which Victoria Police have dealt with me since the media coverage, (haphazard, at times bullying, not bothering to inform me as a victim of the status of any investigation), to date no-one has ever indicated to me what if anything is being done to secure the information I provided as an informer/human source, to determine precisely who is responsible or indeed to apologize to me for what has occurred.
>
> As your organization is well aware, I have never told anybody the details that the Herald Sun has obtained. It still physically sickens me to know that police members have revealed details of specific investigations, specific targets, the names of my handlers and the fact that over 5,000 IR's were created as a direct consequence of my assistance. I live in genuine fear of what may come out next in terms of media or interviews or IBAC. You may say in response to this that I need not worry about media stories because of the injunction/non-publication orders in place however may I indicate that

461 Transcript (10 October 2024) 982:8–983:13 (Plaintiff XXN).

462 Transcript (10 October 2024) 985:6–9 (Plaintiff XXN).

463 Exhibit P105.

not only have various court orders been breached multiple times to date but that there isn't anyone in Victoria who does not know who Lawyer X is when references are made publicly.

I am not in a position to challenge any risk assessment conducted by Victoria Police so accordingly, I accept what your members have told me that is that my life is in the highest category of danger. This of course is as a direct consequence of breaches of Police regulations (and criminal offences) committed by Victoria Police members in providing information to a number of journalists and media organisations. Whilst I accept my life is in danger, entering Witness Protection on the terms and basis offered and entrusting my life to the very same organisation that has failed me so deplorably is not an option I will entertain.

I have implemented various security and privacy measures to date at my own expense and following the recent birth of my second child, I have given thought to moving interstate and to other long term changes to assist me in being able to move forward with my life with some degree of privacy, security and most importantly, having regard for the health and wellbeing of myself and my children. I am being treated for severe depression, anxiety, panic attacks and post traumatic stress disorder (caused or aggravated by reason of what has occurred) and I intend to continue to receive treatment from the same doctors and other specialists to try to improve my mental and emotional health. It goes without saying that Witness Protection cannot accommodate such basic needs that are instrumental to my health improving.

On a personal level I feel betrayed by the very people in whom I placed my trust that they would maintain my confidential role and that it would never ever become publicly known.

I am not simply disappointed but rather, I am traumatised by my role being made public.

Of course, the greatest irony is that I provided Victoria Police with significant assistance over a number of years for absolutely no benefit to myself and for altruistic reasons. My last contact with my then handlers was confirming that they had very favourably completed their reports as to the results achieved by reason of my assistance and they advised me to make an application for a reward. Due to the debacle of me being called to give evidence in 2012 and the suggestion that I may have to do so again in 2013, I have not yet made any application as I have always felt that until I could be confident that I would not run the risk of my assistance to police coming out (in evidence), I would not apply and in doing so, confirm all of the targets, the achievements, the investigations in which I was involved and the monies and properties seized and criminals prosecuted. Now that Victoria Police members have revealed my status publicly, it is my intention to formally apply to the Rewards Committee.

It is also my intention to issue legal proceedings against Victoria Police for breaching its duty of care to me as an informer/human source unless your organisation is prepared to resolve this matter by way of negotiation.

I am prepared to meet with you to try to reach a mutually acceptable agreement. I would encourage you to consider this option seriously because it is in no-one's best interests for my role and involvement as an

> informer/human source to be detailed in a Writ or explored in civil proceedings.
>
> I see no point in having any further meetings with any officers from Witness Protection, particularly if I am made to feel threatened by them (and/or other independent persons they may bring with them as happened three months ago). For completeness, I commend the professionalism, dedication and honesty of Detective Inspector Ian Campbell, in whom I maintain confidence and trust as my liaison officer. Others in your organisation could learn from the example he sets.
>
> I look forward to your reply.
>
> Yours Sincerely,
>
> Nicola Gobbo

597 Ms Gobbo was taken to this letter in cross-examination. She agreed that she knew at that time that she had a cause of action available to her, and that the revelation of her role as informer had caused her to suffer anxiety and depression.[464]

598 On 30 June 2015, Ms Gobbo wrote a follow-up letter, this time to Assistant Commissioner Fontana. It is a very long letter, which again discloses a great deal about Ms Gobbo's knowledge and state of mind at that time. Among other things, Ms Gobbo wrote:[465]

(a) She had accepted that she would have to continue to live with the prospect that more details would emerge publicly. She said that, with the assistance of a clinical psychologist and a doctor, she would need to continue to manage 'the literally paralysing fears and uncertainty as well as heightened danger that impacts upon my existence'.

(b) Her treating psychologist had said on occasion that, were it not for her children, she did not think Ms Gobbo would still be alive, such was the level of her depression, anxiety, and post-traumatic stress disorder.

(c) If she was forced into litigation with respect to Victoria Police's negligence in failing to keep her assistance confidential, and failing its duty to her as an

[464] Transcript (10 October 2024) 983:25–988:24 (Plaintiff XXN).

[465] Exhibit P106: Letter from EF to Assistant Commissioner Stephen Fontana dated 6 July 2015. The letter is set out at length in *AB & EF v CD* [2017] VSC 350, [19].

informer, the question of which members were involved and responsible would be a matter for a Supreme Court judge to consider. She hoped that she would not have to pursue Supreme Court proceedings, which would be damaging and embarrassing both for her and for Victoria Police.

(d) Since the 'Lawyer X' publicity started, her mental, emotional, and physical health had been in decline, and she felt the impact of the 'nightmare' almost every day. In addition to her anxiety, fear, severe depression, post-traumatic stress disorder, and paranoia, her name had been destroyed and she had lost many friendships and relationships, both personal and professional, in the legal community in Victoria.

(e) She was prepared to meet with Mr Fontana to try to reach a mutually acceptable agreement. It was in no one's best interests for her role and involvement as an informer/human source to be detailed in a writ or explored in civil proceedings in a public forum.

599 Ms Gobbo was also taken to this letter in cross-examination, and thought that everything she had written was accurate.[466] She was not re-examined about it or her earlier letter.

600 I turn now to the considerations listed in s 27L of the Limitation of Actions Act.[467]

601 The 12 year 'long stop' limitation period for Ms Gobbo's first two causes of action expired in September 2017. Her third cause of action, against Mr Overland, was statute barred by December 2020 at the latest, 12 years after Mr Overland agreed she should transition from informer to witness, giving her access to the witness protection program.

602 The causes of action were discoverable by no later than October 2014, when Ms

466 Transcript (10 October 2024) 989:26–990:6 (Plaintiff XXN).

467 The considerations are dealt with as follows: s 27L(1)(a) (length of delay) in [601], [603]; s 27L(1)(a) (reasons for delay) in [604]–[608]; ss 27L(1)(b) and 27L(2)(a) in [609]; s 27L(1)(c) in [610]; s 27L(1)(e) in [602]; s 27L(1)(f) in [611]; s 27L(1)(g) in [612]–[613]; and s 27L(2)(b)–(c) in [614]. S 27L(d) does not arise.

Gobbo wrote to Mr Lay. Indeed, it is clear from that letter and the follow-up letter of June 2015 that Ms Gobbo understood that she had a cause of action. The two letters identify all of the elements of the causes of action Ms Gobbo has pursued in this proceeding, including that she had suffered injury due to the disclosure of her role as an informer. She understood then that she could bring a proceeding in the Supreme Court, a path she had already taken once in the 2010 proceeding.

603 The length of the delay was therefore about seven years, between 2014 and 2021. For the first three of those years, until September 2017, Ms Gobbo could have brought a proceeding within the limitation period.[468]

604 The reasons for the delay between 2014 and December 2018 are obscure. Ms Gobbo gave no evidence that explained why she did not bring a proceeding against members of Victoria Police in 2014 or 2015, as she had foreshadowed in her letters to Mr Lay and Mr Fontana. The attempts made in final submissions to downplay the impact of the 2014 disclosure were at odds with the suffering described by Ms Gobbo in her correspondence. Between 2016 and 2018, she was engaged in the *AB & EF v CD* proceedings, and had access to competent and experienced solicitors and counsel.

605 I do not accept the assertion that suppression orders made in those or any other proceeding prevented Ms Gobbo from instructing lawyers to prepare a claim. There was no evidence about these orders, including their terms or when they were made. Presumably, they were made for Ms Gobbo's protection, to prevent any further disclosure of her identity, and were not intended to prevent her from obtaining legal advice and representation.

606 Nor do I accept that Ms Gobbo could not commence a proceeding because to do so would disclose that she had been an informer. First, a disclosure had occurred in March 2014, after which the identity of Lawyer X was widely known. Second, she could have sought orders to conceal her identity, as was done in the *AB & EF v CD*

468 Limitation of Actions Act, s 27D(1)(a).

proceedings and in this proceeding until June 2023.

607 Reasons were given for the delay between November 2018 and September 2021, up to a point. From the time of the High Court's decision until December 2019, Ms Gobbo was living in unsettled circumstances, mainly outside Australia. After she and the children returned to Victoria in December 2019, she was naturally preoccupied with the Children's Court proceedings. I accept that this was an extremely difficult period for Ms Gobbo, and that all her energies were directed to negotiating an acceptable, long-term living arrangement for her family.

608 However, I do not accept the submission that Ms Gobbo was unable to instruct lawyers due to police supervision or the operation of the Witness Protection Act. Ms Gerdtz denied that there was any such restriction, and the fact was that Ms Gobbo was legally represented in the Children's Court proceedings. Ms Gobbo's counsel were unable to explain how the Witness Protection Act applied to prevent her from seeking legal advice or representation.

609 The State did not contend that it would suffer any specific prejudice by reason of the delay. In other words, it did not suggest that it could not receive a fair trial. In the unique circumstances of this case, where the coals have been raked over by the Royal Commission and two earlier inquiries, there is little general prejudice occasioned by the delay.

610 Equally, no real complaint can be made about the extent to which Victoria Police made available to Ms Gobbo the means of ascertaining facts relevant to her causes of action. The Chief Commissioner instigated the *AB & EF v CD* proceedings,[469] and advised Ms Gobbo to become a party. The generally strict approach taken by Victoria Police to claiming public interest immunity was not shown to have concealed the existence of material facts from Ms Gobbo.

611 Because of her unexplained inaction between 2014 and 2018, I do not accept that

469 See [Error: Reference source not found] above.

Ms Gobbo acted promptly and reasonably once she knew she might have a cause of action.

612 Ms Gobbo's medical records and her letters to Mr Lay and Mr Fontana indicate that she was receiving medical advice and treatment from 2014 onwards. She received support from her long-term psychologist Ms Frankcom throughout that time. I assume that Ms Gobbo conveyed her medical advice accurately in her letters, and that she was told by her treating practitioners at that time that the disclosure had caused severe depression, anxiety, and post-traumatic stress disorder.

613 It is unclear what steps, if any, Ms Gobbo took to obtain legal advice about a possible further claim against Victoria Police from 2014 onwards. She instructed lawyers in the *AB & EF v CD* proceedings from some time in 2016, and the same solicitors represented her in the Royal Commission. She attempted to engage Holding Redlich in late 2018, but that came to nothing. In mid-2019, she was referred to Angela Sdrinis, her solicitor in this proceeding. Ms Gobbo did not disclose what legal advice she had received about her claims in this proceeding, or when she received it.

614 As to the nature of the State's conduct, and the nature and extent of Ms Gobbo's loss, none of her claims of negligence has been made out. This is not a case in which a limitation period will defeat an otherwise good claim.

615 Having regard to all of those matters, I am not persuaded that it would be just and reasonable to extend the limitation period for Ms Gobbo's claims. The public interest in reasonable finality looms large in this case, and the plaintiffs have not shown good reason to permit Ms Gobbo to litigate statute barred claims. She knew she had a claim in 2014, but for reasons that were not adequately explained she did not commence this proceeding until September 2021. I have given particular weight to the absence of any reason for the delay between 2014 and late 2018, when Ms Gobbo was otherwise well placed to litigate.

616 Ms Gobbo's application for an extension of time is therefore refused.

DEFENCES

Release defence

617 In April 2010, Ms Gobbo commenced a proceeding in this Court against the State, Mr Overland, and Ms Nixon. In broad terms, it concerned unsuccessful efforts to agree on witness protection arrangements for Ms Gobbo, necessitated by her role as a witness in the criminal prosecution of Mr Dale in the murders of Terence and Christine Hodson. The allegations made in the statement of claim are examined in detail below. The defendants denied liability in a defence filed in June 2010.

618 The proceeding settled on 11 August 2010, when the parties signed the 2010 release. The recitals set out the background to their agreement:[470]

> A. In about January 2009 the plaintiff agreed to make a statement and to give evidence in criminal proceedings contemplated against one Paul Dale.
>
> B. Paul Dale was subsequently charged with the murder of Terence Hodson.
>
> C. Victoria Police has considered, and remains of the view that, in order to reduce the risk of harm or injury to the plaintiff, it is necessary for the plaintiff to engage the provisions of the *Witness Protection Act 1991*, change her identity and relocate to a place outside Victoria.
>
> D. The plaintiff and Victoria Police have been unable to agree terms on which the plaintiff would receive witness protection, and disputes have arisen between the plaintiff and the defendants.
>
> E On 29 April 2010 the plaintiff commenced this proceeding against the defendants seeking damages in respect of allegations of personal injury and related wrongdoing in connection with causes of action relating to her status as a witness in the prosecution of Paul Dale. The causes of action are more particularly set out in the statement of claim filed in the proceeding.
>
> F. The defendants have filed a defence to the proceeding in which their defence to the plaintiff's claims is more particularly set out.
>
> G. Victoria Police no longer proposes to call the plaintiff to give evidence in any proceedings, no longer seeks the plaintiff's assistance in relation thereto, and accordingly [Mr Overland] himself or by an authorised officer —
>
> (a) will direct that members of Petra Taskforce do not contact the plaintiff;

[470] **Exhibit P64**: Terms of Settlement dated 11 August 2010, 1–2.

(b) will remove the current prohibition on the Head of the Source Development Unit or his delegate communicating with the plaintiff; and

(c) will remove surveillance equipment installed by Victoria Police at the plaintiffs residence as part of Operation Loris.

H. In order to avoid the cost and inconvenience of litigation, the plaintiff and the defendants have agreed to compromise the proceeding on the following terms.

619 The State agreed to pay Ms Gobbo $3,000,000 inclusive of costs and GST, less any amounts payable to Medicare. The parties provided mutual releases, in the following terms:[471]

…

4. The plaintiff hereby releases and forever discharges the defendants, their servants and agents and individual current or former members of Victoria Police of and from —

(a) all causes of action relating to the subject matter of the proceeding; and

(b) without limiting (a) above, all causes of action which have accrued as at 12 August 2010 arising from or in any way relating to the plaintiff's contact, communication or dealings with Victoria Police or its members.

5. The defendants hereby release and forever discharge the plaintiff of and from all causes of action relating to the subject matter of the proceeding.

…

620 The defendants also agreed and acknowledged that Ms Gobbo was released from any agreement arrangement or understanding that she provide any support or assistance for Victoria Police in relation to any matter.[472]

621 The State pleaded that Ms Gobbo's claims in this proceeding were barred by this settlement. It said the claims relate to the subject matter of the 2010 proceeding, and had accrued as at 12 August 2010, so that Ms Gobbo had released and forever discharged it from all of the causes of action in this proceeding.

(25) Is Ms Gobbo bound by the 2010 release?

471 Exhibit P64, 2.
472 Exhibit P64, 3.

622 In their reply, the plaintiffs pleaded that the State had materially breached the 2010 release, so that Ms Gobbo should be relieved from the State's reliance on it. The alleged breach was that Ms Gobbo was contacted by Victoria Police in January or February 2011 and named as a witness in relation to the prosecution of Mr Dale for perjury in the Australian Crime Commission. The plaintiffs abandoned that claim in the course of the trial.[473]

623 As a result, there is no longer any dispute that Ms Gobbo is bound by the 2010 release. What is in dispute is whether her claims in this proceeding were matters in the contemplation of the parties at the time the release was given.

(26) Do any of Ms Gobbo's causes of action in this proceeding relate to the subject matter of the 2010 proceeding?

Plaintiffs' submissions

624 The plaintiffs took as their starting point the three special principles of interpretation of releases set out in ***Grant*** *v John Grant & Sons Pty Ltd*,[474] which they summarised as follows:[475]

(a) general words used in a release are restrained/controlled by any recitals stated in the release (**principle one**);

(b) general words used in a release are restrained/controlled by those things in the parties' contemplation at the time the release was given and the settlement of the dispute that existed between the releaser and releasee (**principle two**); and

(c) whatever the result at law, equity will restrain reliance on a release upon equitable considerations according to the knowledge and intent of the parties claiming and denying the benefit of the release, thus confining the release to

[473] Transcript (21 November 2024) 1976:27–31 (Hamilton address).

[474] (1954) 91 CLR 112 (***Grant***).

[475] Referring to *Grant* (1954) 91 CLR 112, 123–4, 129–30 (Dixon CJ, Fullagar, Kitto and Taylor JJ); *Sarina v Fairfax Media Publications Pty Ltd* (2018) 365 ALR 15, [20]–[21]; *Wardman v Macquarie Bank Ltd* (2023) 322 IR 278, [207], [209] (Wheelahan J); *Reid v Commonwealth Bank of Australia* (2022) 109 NSWLR 149, [34] (Leeming JA, with Bell CJ agreeing at [2]–[3]); Perry Herzfeld and Thomas Prince, *Interpretation* (Thomson Reuters, 3rd ed, 2024) [30.70]–[30.80]; Robert Norton et al, *A Treatise on Deeds* (Sweet & Maxwell, 2nd ed, 1928) 208–10.

the right intended to be released or extinguished, and not more (**principle three**).

625 As to principle one, the plaintiffs said that there was no reference in the recitals of the 2010 release to Ms Gobbo being an informer, or to the parties having any dispute in that regard. Accordingly, the general words used in both sub-cls 4(a) and (b) must be restrained to apply only to the dispute between Ms Gobbo and the defendants to the 2010 proceeding. They cannot extend to cover any of the causes of action alleged in this proceeding, as they are not the subject of the 2010 proceeding.

626 As to principle two, the plaintiffs submitted that there was no ambiguity in what the parties intended to resolve in the 2010 release, because of the detailed recitals and the detailed allegations in the statement of claim in the 2010 proceeding. The general words used in cl 4 therefore must be restrained so as to apply to what was contemplated by the parties in settling the matters in dispute in the 2010 proceeding. Regard to events, circumstances, and things external to the release would, in the plaintiffs' submission, assist Ms Gobbo, because there was no evidence that the parties contemplated resolving the matters alleged in this proceeding.

627 As to principle three, the plaintiffs referred to Ms Gobbo's evidence that the 2010 release was in no way related to her being a human source, and was specifically related to promises and assurances given to her by members of the Petra Taskforce with the imprimatur of Mr Overland.[476] They said that it was not put to Ms Gobbo in cross-examination that she intended to settle the claims she is now making in this proceeding. They also referred to Mr Overland's account of the circumstances surrounding the settlement of the 2010 proceeding, which did not include any reference to Ms Gobbo's prior role as an informer.[477] In circumstances where neither party intended the release to cover claims arising from Ms Gobbo's role as an informer, the plaintiffs submitted that equity should restrain the State from using the general words of a release to escape liability outside the true purpose of the release.

476 Referring to Transcript (4 October 2024) 454:24–455:5 (Plaintiff XN).
477 Referring to Exhibit D2, [183]–[189].

628 Specifically in relation to cl 4(a), the plaintiffs said that there was nothing in the 2010 proceeding that related to this proceeding, and that the two proceedings had entirely different subject matters. They accepted that the pleadings in the 2010 proceeding were deliberately crafted so as to conceal Ms Gobbo's prior involvement as an informer. However, that did not mean that she was seeking compensation, or was compensated, for future claims arising from that role.

State's submissions

629 The State also referred to the three special principles to be applied in construing a release, but said that the proper approach was first to apply the general principles of contractual interpretation.[478] It cautioned against giving the special principles in *Grant* a broader operation than was justified, and said that *Grant* was not authority for the proposition that a release can only ever apply to matters then known to the parties.[479]

630 The State submitted that the subject matter of the 2010 proceeding was, in general terms, Ms Gobbo's role as a potential witness in the (ultimately aborted) criminal prosecution of Mr Dale, the unsuccessful negotiations between Ms Gobbo and Victoria Police over the terms on which she would be afforded witness protection for that role, and the effect of those interactions on Ms Gobbo's health and career. It acknowledged that it was necessary to consider the 'subject matter' by reference to the pleaded allegations in the 2010 proceeding. As Ms Gobbo had accepted, the pleadings in the 2010 proceeding were crafted so as to conceal her role as a police informer.[480]

631 The State provided the following summary of the relevant allegations set out in the statement of claim:[481]

> a. Ms Gobbo at all relevant times until March 2009 practised as a criminal defence barrister at the Victorian Bar and since 4 March 2009 had been known as "Witness 2" and/or "Witness F" [1];

478 Referring to *Burness v Hill* [2019] VSCA 94, [59].
479 Referring to *Doggett v Commonwealth Bank of Australia* (2015) 47 VR 302, [63] (Whelan JA).
480 Referring to Transcript (10 October 2024) 955:27–956:13 (Plaintiff XXN).
481 Defendant's closing submissions, [719]. The numbers in square brackets refer to the relevant paragraph of Exhibit P62: Writ and Statement of Claim dated 29 April 2010.

b. various members of Victoria Police established a steering committee to exercise command, responsibility and supervision over matters relating to the murders of Terence and Christine Hodson [5(d)];

c. on various dates from 5 March 2008, members of Victoria Police (Davey, O'Connell and Solomon, who are not the subject of allegations in the present proceeding) communicated with Ms Gobbo regarding her willingness to assist in the investigation of the Hodsons' murders, in particular by covertly recording a conversation with Dale and then making a statement regarding her knowledge of the involvement of Dale in those murders [6];

d. Ms Gobbo agreed to covertly record a conversation with Dale but no more [9]; and Ms Gobbo later met with Dale and recorded a conversation with him [10];

e. during December 2008, Davey and O'Connell again requested Ms Gobbo to provide a statement about the involvement of Dale and the conversation with Dale she had recorded about the involvement of Dale in the murders of the Hodsons [11] and [12];

f. the defendants in December 2008 and January 2009 made certain representations and acknowledgements to Ms Gobbo regarding her concerns in order to induce her to agree to make a statement against Dale and give evidence against him if summonsed [14], [15] and [16]; and induced by the defendants' representations and acknowledgements, in January 2009, Ms Gobbo agreed to make a statement against Dale and give evidence against him if summonsed and continued to assist the defendants with the investigation into the murders of the Hodsons (***the agreement***) [17];

g. there were terms of the agreement including that: Ms Gobbo would make a statement against Dale and give evidence against him if summonsed; Ms Gobbo would continue to assist Victoria Police with their enquiries into the murders of the Hodsons and any related matters or investigations; the defendants would provide Ms Gobbo with ongoing witness management and support and do all other necessary and reasonable things to ensure the safety of Ms Gobbo or any of her immediate family members; the defendants would protect Ms Gobbo's ongoing security and welfare [18];

h. following the agreement, Ms Gobbo: made and signed a statement to Victoria Police against Dale; at the defendants' request returned all briefs, ceased accepting new ones, ceased practising as a barrister, had her practising certificate and professional indemnity insurance suspended and terminated her chambers lease; relocated interstate and thereafter resided at approximately 14 addresses from 4 March to 24 November 2009; and used an assumed name and identity [20(a)(viii)];

i. following the agreement, the defendants provided Ms Gobbo with witness support and management from 4 March to 20 November 2009, at which time they terminated that support and management [20(b)(i)];

j. on around 8 May 2009, the defendants served upon Dale a hand-up brief which disclosed her identity, her medical condition and the location of her treating specialist [20(b)(xii)];

k. between 9 March 2010 and April 2010, the defendants instructed solicitors and counsel to make claims for public interest immunity in relation to documents and items sought by Dale relating to Ms Gobbo's ongoing security, safety and wellbeing and, in the course of doing so, *repeatedly referred to Ms Gobbo as a police informer in open court* [20(b)(xxvi)];

l. by no later than 7 September 2009, the defendants knew or ought to have known that the dealings between them and Ms Gobbo were subjecting her to significant stress which was aggravating her medical conditions [22] and [28];

m. between late July 2009 and 22 April 2010, Ms Gobbo's health deteriorated markedly because of her dealings with the defendants and the manner in which they sought to protect her and she developed, inter alia, a *major depressive disorder* [27];

n. in late November or early December 2009, the defendants repudiated the agreement and Ms Gobbo accepted that repudiation [32] and [33];

o. the defendants breached the agreement in various ways including: not providing appropriate or ongoing witness management and support; terminating, without justification, the provision of ongoing witness management and support; failing to appropriately protect the identity of Ms Gobbo; failing to negotiate in good faith Ms Gobbo's admission into the witness protection program or provide access to the witness protection program on flexible terms; failing to provide any or adequate protection for Ms Gobbo's ongoing security and welfare; and failing to provide compensation to ensure that Ms Gobbo would be "no worse off financially or otherwise" as a result of providing the requested assistance [34];

p. in the alternative to the agreement, an estoppel arose from the fact that Ms Gobbo was induced to assume there was an agreement, and she acted on that assumption to her detriment (as the defendants intended and knew), the detriment including that Ms Gobbo was placed in grave personal danger, her identity as a prosecution witness became widely known and she was stigmatised as a police informer [39];

q. the defendants breached fiduciary duties to Ms Gobbo by the conduct pleaded in relation to the agreement [45];

r. the defendants breached their duty of care to Ms Gobbo by the conduct pleaded in relation to the agreement [52]; and

s. as a consequence of the wrongful conduct of the defendants, Ms Gobbo suffered loss and damage including the major depressive disorder referred to in [27], [54].

632 The State said that 'causes of action' should not be construed narrowly or technically as a reference to the legal form of a claim, but by reference to the collection of material facts or matters alleged to entitle Ms Gobbo to relief in this proceeding.[482] It submitted that cl 4(a) of the 2010 release requires a comparison between the 'subject matter' of the 2010 proceeding and the facts, matters, and circumstances alleged in this proceeding.

633 The facts, matters, and circumstances identified by the State as the causes of action in this proceeding were, in summary:[483]

a. from mid-2003 to 2005, various Victoria Police officers in the Purana Taskforce had discussions with Ms Gobbo about their investigations into Melbourne's gangland crime and induced Ms Gobbo to provide information relevant to those investigations, including confidential information about some of her clients [3]–[4];

b. in August and September 2005, members of the MDID approached Ms Gobbo seeking to induce her to become a Victoria Police informer including by providing confidential information about her clients to assist MDID and Purana investigations [5];

c. MDID members and members of the SDU induced Ms Gobbo to become a police informer on the assurance that her identity would be protected, the information she provided would remain confidential to Victoria Police and she would remain safe [6];

d. based upon those assurances, Ms Gobbo became a Victoria Police informer on 16 September 2005 and remained one until 2009 and provided information to members of Victoria Police relevant to their investigations, including confidential information relating to her clients [7]–[9];

e. from about December 2018, Ms Gobbo was exposed to the public as a police informer following the HCA Decision [10];

f. Mr Overland was negligent in continuing to permit and failing to stop Ms Gobbo from being a registered police informer until 2009 notwithstanding his concerns that this carried legal and ethical issues, that Ms Gobbo was becoming increasingly difficult to manage and that Ms Gobbo was at considerable personal risk [35]–[41];

g. Mr Overland was aware that Ms Gobbo was being induced by Purana and MDID officers to become an informer; that she was a practising

482 Referring to *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 598, 610–1 (Brennan J); *Central Electricity Board v Halifax Corporation* [1963] AC 785; *Cooke v Gill* (1873) LR 8 CP 107; *Do Carmo v Ford Excavations Pty Ltd* (1984) 154 CLR 234, 245 (Wilson J).

483 Defendant's closing submissions, [725]. The numbers in square brackets refer to the relevant paragraphs in the FASOC.

criminal defence barrister with clients who were under investigation by Purana and/or MDID; that the information being sought from her included confidential and privileged information about her clients; and of the duty of disclosure to the accused of information helpful to the accused's defence [48A];

h. despite his knowledge and concerns about Ms Gobbo being an informer, Mr Overland permitted this to occur and continue [48B];

i. on various occasions from 26 September 2005, Mr Overland discussed concerns he had about Ms Gobbo remaining an informer with various senior officers *and from about 17 May 2006 discussed an "exit strategy" for Ms Gobbo as informer due to the legal and ethical issues and personal risk to her [48C]–[48K]*;

j. *on 5 December 2008, Mr Overland met with various other senior officers and expressed the view that Ms Gobbo "should be used as a witness rather than a police informer" given the ethical issues arising from a criminal defence barrister informing on her clients [48L]*;

l. *notwithstanding expressing that Ms Gobbo "should be used as a witness rather than a police informer" (see [48L]) from September 2005 to 2009, Mr Overland permitted the use of Ms Gobbo as an informer assisting Purana and MDID [49]*;

l. by permitting the use of Ms Gobbo as a police informer in the circumstances (*including those in [48L]*), Mr Overland's exercise of power was invalid, in bad faith and amounted to misfeasance in public office [49A]–[53]; and

m. as a result of the alleged wrongdoing, Ms Gobbo suffered injury, loss and damage from about December 2018 [55].

634 The State noted that the psychiatric conditions aggravated or caused by the alleged wrongdoing were not particularised in paragraph 55 of the statement of claim, but that the evidence at trial identified major depressive disorder and post-traumatic stress or unspecified trauma or stressor-related disorder.

635 Next, the State emphasised the breadth of the words 'relating to'.[484] It said that the words connote association or connection between two things — in this case, the subject matter of one proceeding and causes of action in another. It accepted that it was necessary to consider the closeness or proximity of the association or connection intended in cl 4(a) of the 2010 release, by reference to the relevant context.[485]

484 Referring to *Commissioners of Inland Revenue v Maple & Co (Paris) Ltd* [1908] AC 22, 26 (Lord Macnaghten); *Tooheys Ltd v Commissioner of Stamp Duties (NSW)* (1961) 105 CLR 602, 620 (Taylor J); *Oceanic Life Ltd v Chief Commissioner of Stamp Duties* (1999) 168 ALR 211, [56].

485 Referring to *O'Grady v Northern Queensland Company Ltd* (1990) 169 CLR 356, 376 (McHugh J); *Harris v*

636 Bringing those matters together, the State submitted that the 'causes of action' in this proceeding have a sufficiently proximate connection, association, or relationship with the 'subject matter' of the 2010 proceeding to fall within the plain words of cl 4(a) of the 2010 release. It argued that a cursory comparison of the pleadings in the two proceedings demonstrated a close relationship between the facts and circumstances from which the two proceedings arose, with some evident overlap confirmed by the evidence at trial.

637 The State identified five areas of overlap between the two proceedings:

(a) First, the evidence was that Ms Gobbo's assistance to Victoria Police as a potential witness against Mr Dale marked the tail end of her longstanding assistance to Victoria Police as an informer.

(b) Second, there was no clear temporal separation between the two modes of assisting police. The assistance as a potential witness flowed immediately from, and even overlapped with, the assistance as an informer. The pleadings in this proceeding identified using Ms Gobbo as a witness as a means of extracting her from the role of informer.

(c) Third, Mr Overland was alleged to have knowledge, involvement, and wrongdoing in both proceedings.

(d) Fourth, there was overlap in the risk of harm underpinning the duties of care alleged in both proceedings — namely, the risks to Ms Gobbo's safety of potential exposure as a barrister who was assisting police.

(e) Fifth, there was overlap in the harm alleged to have been caused by the wrongdoing in each proceeding, specifically aggravation of pre-existing major depressive disorder.

638 The State submitted that cl 4(a) should not be construed to be limited to causes of

Commissioner of Taxation (2002) 125 FCR 46, [68].

action that had already accrued when the 2010 release was signed. It said that the introductory words of cl 4(b) — 'without limiting (a) above' — indicated that cl 4(a) was intended to be an ample and general release, broader in scope than the more specific cl 4(b). In addition, the fact that the release in cl 4(b) was limited in scope to causes of action 'which have accrued as at 12 August 2010' indicated that the release in cl 4(a) was not so limited.

639 There were also indications in the 2010 release that the parties had in contemplation the broader relationship between Ms Gobbo and Victoria Police. In particular, the reference to the prohibition on communications from the head of the SDU in recital G(b) expressly acknowledged the existence of a prior, but suspended, relationship between Ms Gobbo and the SDU.

640 The State said that the special principles that apply to the interpretation of releases do not lead to a different result or dictate a narrower construction of 'in relation to' or 'causes of action'. In particular, equity would direct the Court to consider the surrounding circumstances, including the state of knowledge of the parties as to the true character and extent of the liability in question, and the actual relationship of the parties from which the 2010 proceeding arose. The events that led to Ms Gobbo becoming a witness in respect of Mr Dale commenced when she was an informer, as far back as May 2007, and her decision to give a statement was made in consultation with her handlers.

Consideration

641 The meaning of the 2010 release is to be determined in the first instance by applying settled principles of contractual interpretation.[486] The rights and liabilities of the parties to a contract are to be determined objectively, by reference to text, context, and purpose. Ordinarily this can be done by reference to the contract alone, but it is sometimes necessary to have recourse to objective circumstances external to the contract. It is permissible to refer to events, circumstances, and things known to the parties that assist in identifying the purpose or object of the agreement, including its

[486] *Burness v Hill* [2019] VSCA 94, [59].

history, background, and context. Evidence of the parties' subjective intentions is not usually admissible.[487]

642 As to text, the words used in cl 4(a) are 'all causes of action relating to the subject matter of the proceeding'. In relation to the ordinary meaning of those words:

(a) I accept the State's submission that the phrase 'causes of action' refers to the facts, matters, and circumstances that must be proved to entitle a plaintiff to relief.[488] The plaintiffs did not contend for any other meaning.

(b) I also accept the State's submissions regarding the breadth of the words 'relating to', that the words connote a relationship, association, or connection between one thing and another.[489] Again, the plaintiffs did not contend for a different meaning.

(c) There was no dispute that the 'subject matter of the proceeding' was defined by the statement of claim in the 2010 proceeding. The plaintiffs did not dispute the State's summary of the matters pleaded, set out at [631] above.

643 As to context, the rest of the 2010 release, including the recitals, provides the immediate context. The introductory words of cl 4(b) — 'without limiting (a) above' — indicate that cl 4(a) was intended to have wide operation, extending beyond the existing causes of action described in cl 4(b). There was also an agreement and acknowledgement in cl 8, that Ms Gobbo was 'released from any agreement arrangement or understanding that she provide any support or assistance for Victoria Police in relation to any matter'. That agreement indicated an intention to bring an end to any ongoing relationship between the parties.

644 Broader context is provided by the matters pleaded in the statement of claim and the pre-existing relationship between Ms Gobbo and Victoria Police. That relationship

487 *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104, [46], [48]–[50] (French CJ, Nettle and Gordon JJ).
488 See [632] above.
489 See [635] above.

involved a great deal more than Ms Gobbo's agreement to make a statement and be a witness in the prosecution of Mr Dale. All of the parties to the 2010 release knew that, for more than three years beforehand, Ms Gobbo had been a registered informer who had provided a vast amount of information to Victoria Police. Her agreement to become a witness in the Dale prosecution was, necessarily, an agreement to end her role as informer and go into witness protection. It was the 'exit strategy' that Ms Gobbo now says should have been implemented at an earlier time. Unfortunately, the parties were unable to agree on the terms on which Ms Gobbo would receive witness protection.

645 As Ms Gobbo acknowledged, the statement of claim in the 2010 proceeding was drawn with care not to reveal that she had been an informer. However, when the pleading is read in the context of that history, the significance of Ms Gobbo's former role as informer becomes apparent. In particular:

(a) Paragraph 20 of the statement of claim pleaded conduct of Ms Gobbo and the defendants following the alleged agreement. At sub-paras 20(b)(xxv) and (xxvi) Ms Gobbo alleged that the defendants had instructed lawyers to claim public interest immunity in relation to documents sought by Mr Dale related to Ms Gobbo, and in the course of making the claim had repeatedly referred to Ms Gobbo as a police informer.

(b) Paragraph 34 alleged breaches of the agreement on the part of the defendants, including an allegation at sub-para 34(c) that the defendants had failed to appropriately protect Ms Gobbo's identity. One of the particulars of that alleged breach was that, in the course of making claims for public interest immunity, the defendants had repeatedly referred to Ms Gobbo as a police informer. The same particulars were provided in relation to claims of breach of fiduciary duty and breach of duty of care.

(c) The harm alleged by Ms Gobbo included harm to her professional reputation due to being labelled as a police informer.

646 Of course, Ms Gobbo had been a police informer. An informed reader of the statement of claim — including the parties to the 2010 release — would have appreciated the acute sensitivity of openly referring to her in that way, and the danger of her previous role as informer being disclosed in the course of the prosecution of Mr Dale.

647 Ms Gobbo clearly identified this danger in letters she wrote to Mr Overland about the terms on which she was to be provided with witness protection. For example, in a letter dated 21 January 2010, Ms Gobbo wrote:[490]

> …
>
> In particular, in relation to witness protection, I have at all times maintained that:
>
> (a) it is significant to me that the matters in which I have previously provided Victoria Police with assistance as well as my current assistance with respect to an ongoing Purana investigation and another Homicide investigation, not be disclosed (directly, indirectly or by inference) in the course of pre-trial proceedings; and
>
> (b) the safest manner in which to ensure the protection of such information is for me to be subject to the provisions of the Witness Protection Act.
>
> As a former Deputy Commissioner for Crime, I am sure that I need not remind you of the difficulties that Victoria Police will encounter if some or any of my past assistance is disclosed in the course of the prosecution of Dale. As matters currently stand, such disclosure would appear to be inevitable. Leaving aside the impact such disclosure will have on me personally (including but not limited to my future safety), the difficulties Victoria Police will encounter will extend well beyond the obvious embarrassment and damage that will be done to the Dale prosecution.
>
> …

648 Similarly, there are aspects of the 2010 release that come into sharper focus when read with full knowledge of the relationship between Ms Gobbo and Victoria Police. In particular:

(a) Recital C recorded the view of Victoria Police that, in order to reduce the risk

490 Exhibit P101: Letter from Witness F to Chief Commissioner Simon Overland dated 21 January 2010, [6]–[7]. See also Exhibit D13: Letter from Witness F to Chief Commissioner dated 7 September 2009, [34], [47]–[48].

of harm or injury to Ms Gobbo, it was necessary for her to engage the provisions of the Witness Protection Act, change her identity, and relocate to a place outside Victoria. As was clear from Mr Overland's evidence at trial, this view was informed not only by Ms Gobbo's agreement to be a witness against Mr Dale, but by the three years before that during which she had been a prolific human source.[491] From the correspondence just referred to above, Ms Gobbo seems to have shared this view.

(b) Recital G(b) committed Mr Overland to removing the prohibition on the head of the SDU or his delegate communicating with Ms Gobbo. This commitment only makes sense by reference to Ms Gobbo's prior relationship with the SDU.

(c) Clause 8 recorded the parties' agreement and acknowledgment that Ms Gobbo was 'released from any agreement arrangement or understanding that she provide any support or assistance for Victoria Police in relation to any matter'. On its face, the clause refers to something more than the specific agreement to give evidence in the Dale prosecution. Its significance is clear in light of the support and assistance that had been provided by Ms Gobbo in relation to many matters during her time as an informer.

649 As to purpose, the stated purpose of the 2010 release was 'to avoid the cost and inconvenience of litigation'. In the context just discussed, this purpose informs the interpretation of the release in cl 4(a), and indicates that it was intended to have a wide operation.

650 However, the special principles articulated by the High Court in *Grant* also apply to the interpretation of the release.[492] In summary, the general words of the release are limited to the matters that were specifically in the contemplation of the parties at the time the release was given. Those matters can be determined by reference to the context and recitals of the agreement, and the dispute between the parties at the time

491 Transcript (21 October 2024) 1674:14–1675:16 (Overland XXN).
492 *Burness v Hill* [2019] VSCA 94, [70].

of the agreement. Further, equity will intervene to prevent unconscientious reliance on general words of a release, by restricting their meaning according to the knowledge and intent of the parties.[493]

651 The plaintiffs' argument that the meaning of cl 4(a) was limited by the recitals did not take account of the way in which recitals C and G(b) related to Ms Gobbo's previous role of informer. As discussed, the context of the parties' relationship involved a great deal more than Ms Gobbo's role in the Dale prosecution.

652 Similarly, the plaintiffs' submission that cl 4(a) should be constrained by the description of the dispute in recital E did not engage with the detailed pleading in the statement of claim for the 2010 proceeding. It also ignored the background of Ms Gobbo's role of informing, and the fact that the subject matter of the litigation was the failed strategy for her to leave that role.

653 Neither Ms Gobbo nor Mr Overland gave evidence of their subjective intentions at the time of entering into the 2010 release. Ms Gobbo merely gave a general description of the matters in dispute in the 2010 proceeding, without being taken to the 2010 release or cl 4 specifically.[494] There is therefore no basis for equity to restrict the meaning of cl 4(a) by reference to their intent. However, it is clear that all parties to the 2010 release knew the full history of Ms Gobbo's relationship with Victoria Police and the deep roots of the dispute about the witness protection to be provided for Ms Gobbo. Their knowledge of the broader context does not support restricting the meaning of the release.

654 For those reasons, I conclude that Ms Gobbo's causes of action in this proceeding relate to the subject matter of the 2010 proceeding. The two proceedings arose from the same facts and circumstances, and overlap in the ways identified by the State at [637] above.

493 *Grant* (1954) 91 CLR 112, 123–5 (Dixon CJ, Fullagar, Kitto and Taylor JJ). See also *Burness v Hill* [2019] VSCA 94, [71]–[74]; *Cargill Australia Ltd v Viterra Malt Pty Ltd (No 28)* [2022] VSC 13, [4497]; *RW & ME Smith Pty Ltd v Boral Resources (Vic) Pty Ltd* [2023] VSCA 182, [96]–[100].

494 Transcript (4 October 2024) 454:24–455:3 (plaintiff XN). See also Transcript (10 October 2024) 958:20–960:19 (Plaintiff XXN), (14 October 2024) 1037:5–1038:31 (Plaintiff RXN).

(27) Had any of Ms Gobbo's causes of action in this proceeding accrued as at 12 August 2010?

Plaintiffs' submissions

655 The plaintiffs relied principally on their submissions concerning the application of the *Grant* principles to cl 4 of the 2010 release.

656 In addition, they submitted that Ms Gobbo's causes of action in this proceeding did not accrue until she suffered loss from being exposed as an informer. Whether Ms Gobbo was first exposed in 2014 or in late 2018, the exposure occurred well after 12 August 2010. They pointed out that negligence and harm are inextricably linked, there being no actionable negligence unless — and until — duty, breach, and consequential damage coincide.

State's submissions

657 The State accepted that damage is the gist of a cause of action in negligence, and that Ms Gobbo's causes of action in this proceeding did not accrue until a breach of duty resulted in loss and damage, being some difference to Ms Gobbo that was detrimental.[495]

658 The evidence at trial was that the primary psychological injuries that Ms Gobbo claims resulted from the pleaded breaches of duty in this proceeding were the development or aggravation of major depressive disorder and an unspecified stress or stressor-related disorder.

659 The State relied on evidence that Ms Gobbo had been treated for depression since at least 2007, and that major depressive disorder is a single underlying condition with episodes that may be triggered by events or circumstances from time to time.[496] It pointed out that Ms Gobbo had pleaded exacerbation of her major depressive disorder as an injury for which she sought damages in the 2010 proceeding. In those circumstances, the State submitted that Ms Gobbo's causes of action in relation to major depressive disorder had accrued by 12 August 2010.

495 Referring to *Alcan Gove Pty Ltd v Zabic* (2015) 257 CLR 1, [8].
496 See [560] above.

660 The State accepted that the evidence was less clear in relation to Ms Gobbo's stressor-related disorder, because the condition was not pleaded in the 2010 proceeding, and the medical evidence contains no such diagnosis before 12 August 2010. It relied on strong indications of symptomatology consistent with the condition existing before then, as described by both Dr Brann and Dr Rauchberger. However, it said that the pre-existing diagnosis of major depressive disorder was sufficient to make out its argument that Ms Gobbo's causes of action in this proceeding had accrued by the time of the 2010 release.

Consideration

661 All of the acts and omissions that were alleged to involve a breach of a duty of care owed by a police officer to Ms Gobbo took place before January 2009. If — contrary to the conclusions I have reached — any of those acts or omissions amounted to a breach of duty, Ms Gobbo's causes of action first arose when she suffered some injury as a result of the breach.

662 There is clear evidence that Ms Gobbo had already suffered major depressive disorder before she agreed to give evidence in the Dale prosecution. On 10 June 2010, Dr Rosemary Schwarz, a psychiatrist who treated Ms Gobbo in 2010, wrote:[497]

> Without a doubt the events of the past two to three years have had a massive impact on her life, her sense of herself, her connection with the significant others in her life and her health. She is extremely subjectively distressed and angry and, as you know, her pain has exacerbated. She has had to cope with anxiety about her future, fear for her life, boredom, isolation, loss of income and, in particular, loss of a sense of future. It is no wonder that she has become depressed …

663 In the same report, Dr Schwarz noted that Ms Gobbo had complained 'of having been episodically suicidal over the previous two years and of having been severely depressed and anxious'. Dr Schwarz prescribed quetiapine for treatment of Ms Gobbo's anxiety and depression, noting that it was also useful in treating post-traumatic stress disorder.[498]

497 Exhibit P13, 1.
498 Exhibit P13, 1–2.

664 The symptoms described in Dr Schwarz's report go back to 2007 or 2008. The 'events of the past two to three years' must have included Ms Gobbo's time as an informer, during which she was constantly vigilant about the risk of exposure. It appears from Dr Schwarz's report that Ms Gobbo's stressful experiences as an informer contributed to the development of her major depressive disorder, before the unsuccessful transition to witness protection.

665 If Ms Gobbo had been entitled to damages for negligence arising from her recruitment and use as a police informer, her causes of action would have accrued before she was deactivated, and certainly before 12 August 2010.

(28) In light of the answers to questions 25, 26 and 27, are Ms Gobbo's claims barred by the 2010 release?

666 Ms Gobbo's claims are barred by the 2010 release. The causes of action she alleged in this proceeding related to the subject matter of the 2010 proceeding, and — if they accrued at all — they accrued before 12 August 2010.

Voluntary assumption of risk defence

(29) Was the risk of the loss and damage claimed in this proceeding an 'obvious risk' for the purposes of ss 53 and 54 of the Wrongs Act, so that Ms Gobbo is presumed to have been aware of the risk?

(30) If 'yes' to question 29, was Ms Gobbo unaware of the risk?

(31) If 'no' to question 29, did Ms Gobbo fully appreciate, and freely and voluntarily accept, the risks of harm to herself and her family members should it become known to those upon whom she was informing that she was assisting and providing information to Victoria Police, including the risk of the loss and damage claimed in this proceeding?

(32) In light of the answers to questions 29 to 31, has the State made out a defence of voluntary assumption of risk to Ms Gobbo's claims in negligence?

667 Given the conclusions I have already reached, I can deal more briefly with these and the remaining questions concerning Ms Gobbo's claims.

668 The State contended in its defence that Ms Gobbo fully appreciated, and freely and voluntarily accepted, the risks of harm to herself and her family members should it become known to those upon whom she was informing that she was assisting and providing information to Victoria Police, including the risk of loss and damage

claimed in this proceeding. On that basis, it relied on *volenti non fit injuria*, or voluntary assumption of risk, as a complete defence to Ms Gobbo's claims.

669 The defence of voluntary assumption of risk is made out if it is proved that the plaintiff freely and voluntarily, and with full knowledge of the nature and extent of the risk, impliedly agreed to accept it. The plaintiff must have actually perceived and fully appreciated the risk, and their acceptance of it must be truly voluntary.[499]

670 The common law of voluntary assumption of risk is now supplemented by s 54(1) of the Wrongs Act, which provides:

> If, in a proceeding on a claim for damages for negligence, a defence of voluntary assumption of risk (volenti non fit injuria) is raised and the risk of harm is an obvious risk, the person who suffered harm is presumed to have been aware of the risk, unless the person proves on the balance of probabilities that the person was not aware of the risk.

671 Section 53 of the Wrongs Act provides:

> **Meaning of obvious risk**
>
> (1) For the purposes of section 54, an **obvious risk** to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
>
> (2) Obvious risks include risks that are patent or a matter of common knowledge.
>
> (3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.
>
> (4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.
>
> …

672 The risk to which s 54 refers must be the same risk as characterised for the purposes of breach of duty of care and causation; in other words, the risk that has actually materialised. The characterisation of the risk must include the general causal mechanism of the harm for which damages are sought, but not necessarily the

[499] *Carey v Lake Macquarie City Council* (2007) Aust Torts Reports 81–874, [70]–[85] (McClellan CJ at CL); *Biggs v O'Connor* (2021) 66 VR 441, [35].

precise manner in which the injuries were sustained. The focus should be on the same essential circumstances that established the need for the defendant to take reasonable care to avoid harm or injury to the plaintiff.[500]

673 The relevant risk in this case is the risk of being exposed as an informer. The general causal mechanism of the harm for which Ms Gobbo claimed damages was her exposure as an informer. It does not matter that the particular harm arose from the measures taken by Victoria Police and Child Protection to protect Ms Gobbo and her children from harm, rather than being injured or killed by someone against whom she had informed.

674 I have no difficulty concluding that the risk of being exposed as an informer, and suffering harm as a result, would have been obvious to a reasonable person in Ms Gobbo's position. A capable criminal defence barrister in September 2005 would reasonably have understood that the identity of an informer might become known in a number of ways. They would have known that someone within Victoria Police might leak the information. They would have been alert to the prospect of an accused person working out the source of information that had led to their arrest. They would have understood that a claim of public interest immunity to protect an informer's identity might be defeated, and that disclosure might be ordered by a court. In addition, violent retribution had been a frequent occurrence in Melbourne's gangland wars. The murder of the Hodsons was still a recent event.

675 Ms Gobbo did not establish that she was unaware of this risk. Rather, the evidence was that Ms Gobbo actually perceived and fully appreciated the risk of being exposed as an informer, and what might happen to her in that event. By September 2005, she had a sound knowledge of the existence of police informers and how they operated. She knew that there was a risk that an informer's identity could be revealed and that, if that occurred, the informer could end up dead. She knew that

500 *Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd* (2022) 273 CLR 454, [112]–[116] (Gordon, Edelman and Gleeson JJ).

the Hodsons had been murdered because Mr Hodson was an informer.[501]

676 Ms Gobbo agreed that she understood that there were a number of ways in which an informer's identity might be discovered. These included a leak from within the police, some inadvertent identifying information in a prosecution brief, or a claim of public interest immunity to resist the disclosure of subpoenaed material. She knew by September 2005 that there was no guarantee that public interest immunity would always protect the identity of an informer. Indeed, she had been briefed by Mr Mokbel to press for the production of information seeking to overcome a claim of public interest immunity in respect of the identity of an informer.[502]

677 Ms Gobbo's evidence at trial was consistent with what she said to Mr White and Mr Smith early in their first meeting: 'I'm dealing with someone who scares me enough that no matter what you people do, if anyone found out about it, I'm just — nothing you can do will protect me'. The risk that someone would find out about it was frankly conceded by Mr White.[503]

678 I am also satisfied that Ms Gobbo had a choice whether to start providing information to police, and whether to continue doing so. As I have found, she was not induced or prevailed upon to become an informer. Ms Gobbo had a range of other ways she could have relieved the pressure she was experiencing from Mr Mokbel and her other gangland connections. There was nothing to stop her from deciding that the risk of exposure was not worth taking, and walking away. Instead, she chose to accept the risk.[504]

679 In light of those conclusions, the State would have made out a defence of voluntary assumption of risk, had it been found liable for any of Ms Gobbo's claims.

501 Transcript (8 October 2024) 685:18–686:18, 934:15–22 (Plaintiff XXN).
502 Transcript (8 October 2024) 686:24–689:29 (Plaintiff XXN).
503 See in particular [273] above.
504 See [345]–[351] above.

Inherent risk defence to ongoing negligent permitting claim

(33) Was the risk of public exposure of Ms Gobbo as an informer an inherent risk within the meaning of s 55(2) of the Wrongs Act?

(34) If so, is the loss and damage claimed in this proceeding the result of the materialisation of that risk, for which the State is not liable in negligence by operation of s 55(1) of the Wrongs Act?

680 The State also relied on the defence of materialisation of inherent risk, under s 55 of the Wrongs Act. Initially, this defence was pleaded in relation to all of Ms Gobbo's claims. In closing, the State pressed it only in relation to the ongoing negligent permitting claim against Mr Overland.

681 Section 55 of the Wrongs Act provides:

> **No liability for materialisation of inherent risk**
>
> (1) A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk.
>
> (2) An **inherent risk** is a risk of something occurring that cannot be avoided by the exercise of reasonable care.
>
> …

682 Again, the relevant risk is the risk of being exposed as an informer.

683 Once Ms Gobbo became an informer, the risk of exposure was ever present. As Ms Gobbo accepted, there were many ways in which an informer might be exposed.[505] The exercise of reasonable care by the officers who owed Ms Gobbo a duty of care — notably, Mr Overland — could not have avoided that risk. Despite reasonable precautions, the conduct of other police, the Director, IBAC, the media, and the courts was beyond their control. In particular, the exercise of reasonable care could not have prevented a court from ordering disclosure of Ms Gobbo's identity, notwithstanding a vigilant assertion of public interest immunity by the Chief Commissioner. In the end, the public interest in the integrity of the criminal justice system prevailed.[506]

505 See [676] above.

506 *AB v CD (HC)* (2018) 93 ALJR 59, [10]–[12], set out at [6] above.

684 For those reasons, I consider that the risk of exposure was an inherent risk for the purposes of s 55(1). The State could not be held liable in negligence for harm suffered by Ms Gobbo due to the materialisation of that risk, if the ongoing negligent permitting claim had been established.

DAMAGES

(35) In respect of any injury identified in answer to question 23, what is a fair and reasonable sum to compensate Ms Gobbo for:

(a) her past and future pain and suffering, including loss of enjoyment of life;

(b) her past loss of earnings and her loss of earning capacity; and

(c) past and future medical and like expenses?

(36) Should Ms Gobbo be awarded exemplary damages?

685 The plaintiffs have not established that Ms Gobbo suffered injury as a result of any breach of the duty of care owed to her by Mr White, Mr Smith, Mr Thomas, or Mr Overland. It is therefore unnecessary to assess damages of any kind.

Contributory negligence

(37) Did Ms Gobbo fail to take reasonable care to avoid suffering the loss and damage claimed in this proceeding?

(38) If so, to what extent is it just and equitable to reduce any damages recoverable by Ms Gobbo?

686 It is unnecessary to answer these questions.

CHILDREN'S CLAIMS

Nervous shock claim

(39) During the period 2003 to 2009, was it reasonably foreseeable to any of Mr Rowe, Mr Mansell, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore that:

(a) there was a risk of harm to immediate family members of Ms Gobbo if she was publicly exposed as an informer;

(b) Ms Gobbo may bear children; and

(c) in that event, those children would be at risk of harm if Ms Gobbo was publicly exposed as an informer?

(40) If so, did any of Mr Rowe, Mr Mansell, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore owe a duty of care to P2 and P3?

(41) If so, did any of Mr Rowe, Mr Mansell, Mr White, Mr Smith, Mr O'Brien, Mr Hill, Mr Overland, Mr Thomas, Mr Purton, or Mr Whitmore breach that duty?

687 I found that Mr White, Mr Smith, and Mr Overland owed Ms Gobbo a duty to take reasonable care to avoid Ms Gobbo suffering injury in connection with being recruited as a police informer.[507] I also found that Mr Overland owed Ms Gobbo a duty to take reasonable care to avoid her suffering injury in connection with providing information to Victoria Police.[508]

688 I accept the plaintiffs' submissions that it was reasonably foreseeable to those police officers that there was a risk of harm to Ms Gobbo's immediate family members if she was publicly exposed as an informer. Mr Overland accepted that was the case, with the qualification that there was an unwritten rule amongst criminals that normally families are not touched. He acknowledged that Christine Hodson had been murdered, although it was her husband who was the informer.[509]

689 I also accept that the police officers who owed Ms Gobbo a duty of care ought reasonably to have foreseen that she might later have children. In September 2005, Ms Gobbo was a woman in her early 30s, and it was entirely possible that she might have children at some time in the next decade. Indeed, she spoke of that possibility in her first interview with Mr White and Mr Smith, in the context of discussing what her life might be like if she stopped working in the law.[510]

690 It follows that it was reasonably foreseeable that, in the event that Ms Gobbo had children, they also would be at risk of harm if she was exposed as an informer.

691 I am prepared to accept that Mr White, Mr Smith, Mr Thomas, and Mr Overland owed a duty of care to Ms Gobbo's immediate family, including any future children. As the plaintiffs submitted, it is uncontroversial that a tortfeasor who causes injury

507 See [377]–[379] (Mr White and Mr Smith), [444]–[449] (Mr Thomas), [453]–[467] (Mr Overland) above.
508 See [516]–[521] above.
509 Transcript (18 October 2024) 1561:2–1562:9 (Overland XXN).
510 See [285] above.

to a primary victim may also breach a duty of care owed to an immediate family member of the primary victim.[511] It does not matter that P2 and P3 were not born at the time the duty arose.[512] There was a lifelong risk of exposure for Ms Gobbo, and the risk extended to members of her immediate family from time to time.

692 Consistent with my conclusions in relation to Ms Gobbo, none of Mr Rowe, Mr Mansell, Mr O'Brien, Mr Hill, Mr Purton, or Mr Whitmore owed a duty of care to P2 or P3.

693 The claims for damages for P2 and P3 were squarely based on Ms Gobbo's claims in negligence, and their claims could succeed only if hers did. For the reasons I have given in relation to Ms Gobbo's claims, none of Mr White, Mr Smith, Mr Thomas, or Mr Overland breached their duty of care to P2 and P3.[513]

Causation

(42) Did any breach of duty cause or materially contribute to P2 suffering any psychiatric condition?

(43) Did any breach of duty cause or materially contribute to P3 suffering any psychiatric condition?

694 This question does not arise, because no breach of duty to P2 or P3 has been established.

695 However, there is no doubt that their worlds were turned upside down in late 2018, when Ms Gobbo abruptly left the country and took P2 and P3 with her. From that time, they were cut off from their friends and extended family in Melbourne. Over the next three years, they lived in many different places, under several different names, under a range of security arrangements. Since 2022, their living arrangements have settled down, although it could hardly be said their life has returned to normal. While Ms Gobbo has been a caring and protective mother throughout this time, the deterioration of her own mental health has affected her

511 ***Healy*** *v Bird* [2022] VSC 823, [74].

512 *Healy* [2022] VSC 823, [80]; *X and Y (by her tutor X) v Pal* (1991) 23 NSWLR 26, 30 (Mahoney JA), 37, 40 (Clarke JA).

513 See [399]–[400], 403], [405] (Mr White and Mr Smith), [471]–[474] (Mr Thomas), [480]–[487], [522]–[531] (Mr Overland) above.

children. The threat of being separated from their mother between 2019 and 2021 was traumatic for both children.

696 The State conceded that the evidence was that both children had been psychiatrically affected by this disruption to their lives.

697 The plaintiffs tendered two medico-legal reports of Dr Robert Adler, child and adolescent psychiatrist, both dated 7 January 2024, in relation to P2 and P3 respectively.[514] They also tendered two medico-legal reports of Dr Joel Singer, another child psychiatrist, dated 12 August 2024, one in relation to each child.[515] In the following discussion of this evidence I use the pronouns 'they' and 'them' to refer to P2 and P3, so as to avoid disclosing either child's gender.

698 In relation to P2, Dr Adler reported:[516]

> P2's response to these stresses included some behavioural regression followed by symptoms of depression and anxiety. P2 also experienced some learning difficulties leading to lowered self-esteem. While P2 may previously have met the DSM-5 diagnostic criteria for PTSD, as diagnosed by [redacted], I believe that currently the most appropriate diagnosis, according to DSM-5 criteria, is an **Adjustment Disorder with mixed anxiety and depressed mood**. I must point out that this diagnosis does not do justice to the complex situation that P2 and [their] family have experienced over the last five years.

699 While there had been some improvement since the family's living arrangements stabilised in 2022, P2 continued to display symptoms of depression and anxiety. The long-term impacts on P2 were difficult to predict, with much depending on the continuation of a stable home and schooling. It seemed likely that P2 would begin to question their family's unusual history as they grew older, which might have implications for their education, career, and work choices.

700 In Dr Singer's opinion, P2 was suffering from post-traumatic stress disorder and a generalised anxiety disorder, caused by the multiple disruptions of their family life

514 **Exhibit P39**: Psychiatric Report of Dr R Adler dated 7 January 2024; **Exhibit P42**: Psychiatric Report of Dr R Adler dated 7 January 2024.

515 **Exhibit P40**: Psychiatric Report of Dr J Singer dated 12 August 2024; **Exhibit P41**: Psychiatric Report of Dr J Singer dated 12 August 2024.

516 Exhibit P39, 14.

between 2018 and 2022.[517] P2's exposure to potential removal from their mother and their belief that she was under threat of serious harm caused P2 to experience significant fear and trauma, with ongoing symptoms. These conditions had persisted even after the family found comparatively stable accommodation two years previously. The likely prognosis was highly speculative, particularly as P2 progresses into adolescence. Dr Singer also commented that P2's symptoms may be exacerbated as they come to realise how extremely unusual their early childhood was, and the reasons for that.

701 Dr Adler diagnosed P3's current psychological condition to be adjustment order with mixed anxiety and depressed mood, again noting that the diagnosis did do justice to the family's complex situation over the previous five years.[518] P3's initial response to stresses of disruption over that time included some behavioural changes, followed by symptoms of stress and anxiety. P3's condition had improved with increased stability since 2022, and the most important factors in their future mental health were the continuation of stable home and schooling in the care of both parents. However, it was difficult to make accurate predictions, and any change of circumstances is likely to have a significant impact. As with P2, P3 may begin questioning the reasons for the family's unusual history with age, with possible implications for their education, career, and work choices.

702 Dr Singer assessed P3's psychological condition in August 2024 as follows:[519]

> I note that P3 was [redacted] in 2018 when … exposed to multiple stressors as a result of the events that are the subject of these proceedings, including believing that serious harm would come to [their] mother and repeated disruptions to [their] education, accommodation, peer, and family relationships. In my opinion, P3 meets diagnostic criteria for post-traumatic stress disorder in an individual [redacted]. P3's trauma symptoms initially appear to have manifested with symptoms including regression with bed wetting, separation anxiety from [their] mother, and emotional dysregulation with anger. While many of these symptoms have resolved, P3 continues to experience physiological distress in response to cues that remind [them] of the events, and [they] noted that [they] avoided discussing the events. P3 additionally described anxiety that [their] mother may be harmed and

517 Exhibit P49, 12–14.
518 Exhibit P42, 14–15.
519 Exhibit P41, 10.

hypervigilance towards police.

703 In Dr Singer's opinion, the cause of this condition was the events the subject of this proceeding.[520] The condition was relatively stable, but would likely evolve as P3 moves into adolescence. While P3 had several positive prognostic factors, including a superior intellect and engagement in school, their overall prognosis was speculative. Increased awareness of the threat to their safety and that of their family may exacerbate their symptoms later in life.

704 Given my conclusions on liability, I do not need to make findings about which of these diagnoses is preferable. Based on the opinions of Dr Adler and Dr Singer, I find that both P2 and P3 suffered psychological injury following the 2018 exposure of Ms Gobbo as an informer, which necessitated huge and traumatic disruption to their lives over more than three years.

Extension of time claim

(44) Is it just and reasonable to extend the time within which P2 and P3 can commence the proceeding, having regard to the matters set out in s 27L of the Wrongs Act and the plaintiffs' further and better particulars filed 9 October 2024?

705 By the time the plaintiffs filed their writ on 7 September 2021, more than 12 years had elapsed since the alleged acts and omissions on which P2 and P3's claims were based. Their claims were therefore statute barred by the long stop limitation period in s 27E(1)(b) of the Limitation of Actions Act. They also seek an extension of time under s 27K of that Act.

706 I have set out at [572] to [575] above the relevant law, and the matters relied on by all three plaintiffs in support of their contention that it would be just and reasonable to extend time. The considerations in relation to P2 and P3 are different from those for Ms Gobbo.

707 Significantly, their causes of action did not accrue, and hence were not discoverable, until they suffered injury at some point after November 2018. The proceeding was commenced within three years of that date. But for the long stop limitation period,

[520] Exhibit P41, 11.

the children's claims would have been commenced within the six year limitation period prescribed by s 27E(2)(a) of the Limitation of Actions Act.

708 An additional consideration in relation to P2 and P3 is that both of them are children, and were dependent on an adult to bring a proceeding on their behalf. I partly accepted the reasons for Ms Gobbo's delay between 2018 and 2021, and accept that those reasons apply equally to P2 and P3, and to their litigation guardian.[521] There was no unexplained delay between 2014 and 2018 in relation to the children's claims.

709 Further, the State identified no specific prejudice due to the delay, and any general prejudice is minimal. I am satisfied that the State has, in fact, had a fair trial.

710 For those reasons, I consider it just and reasonable to extend the time for P2 and P3 to bring their claims.

Inherent risk defence to ongoing negligent permitting claim

(45) Was the risk of public exposure of Ms Gobbo as an informer an inherent risk within the meaning of s 55(2) of the Wrongs Act?

(46) If so, is the loss and damage claimed in this proceeding the result of the materialisation of that risk, for which the State is not liable in negligence by operation of s 55(1) of the Wrongs Act?

711 For the reasons given at [680] to [684] above in relation to Ms Gobbo's claim, the risk of her public exposure as an informer was an inherent risk. The effect of s 55(1) is that the State could not be held liable in negligence for harm suffered by P2 or P3 due to the materialisation of that risk, if the ongoing negligent permitting claim had been established.

Damages

(47) In respect of any injury identified in answer to question 42, what is a fair and reasonable sum to compensate P2 for:

(a) past and future pain and suffering, including loss of enjoyment of life;

(b) loss of earning capacity; and

[521] See [607] above.

(c) past and future medical and like expenses?

(48) In respect of any injury identified in answer to question 43, what is a fair and reasonable sum to compensate P3 for:

(a) past and future pain and suffering, including loss of enjoyment of life;

(b) loss of earning capacity; and

(c) past and future medical and like expenses?

(49) Should P2 and P3 be awarded exemplary damages?

712 The plaintiffs have not established that the injuries suffered by P2 and P3 were the result of any breach of the duty of care owed to them by Mr White, Mr Smith, Mr Thomas, or Mr Overland. They are not entitled to damages of any kind.

713 Given their youth and uncertain prognoses, any assessment of damages for P2 and P3 would have been highly speculative. In those circumstances, I prefer not to attempt an unnecessary assessment.

DISPOSITION

714 I will make an order under s 27K(2) of the Limitation of Actions Act, extending the period of limitation applicable to P2 and P3's causes of action to 7 September 2021.

715 Otherwise, the proceeding must be dismissed.

716 I will hear the parties on the question of costs.